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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-948

NATIONAL CABLE TELEVISION ASSOCIATION, INC.,
Petitioner

v.

UNITED STATES OF AMERICA AND
FEDERAL COMMUNICATIONS COMMISSION,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA AND
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, National Cable Television Association, Inc., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on July 21, 1972.

OPINION BELOW

The opinion of the Court of Appeals is reported at 464 F. 2d 1313 (1972) and appears in the Appendix. (App.A).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on July 21, 1972. A petition for rehearing was denied on October 2, 1972 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

1. Whether the Federal Communications Commission's CATV regulatory scheme confers "value to the recipient" as required by Title V of the Independent Office Appropriation Act, in order to justify an annual fee on the CATV industry.

2. Whether the Commission may recover the full cost of its regulation of the CATV industry where the fees are unrelated to specific services performed by the Commission.

STATUTES INVOLVED

1. Title V of the Independent Offices Appropriation Act of 1952, 31 U.S.C. §483 (a):

> It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he

shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts. . . . .

MISCELLANEOUS

2. Bureau of the Budget Circular No. A-25 of September 23, 1959 (App. C).

3. Report and Order in Docket 18802, In the Matter of Amendment of Subpart G of Part 1 of the Commission's Rules relating to fees, 23 FCC 2d 880 (1970), and Memorandum Opinion and Order denying reconsideration, 28 FCC 2d 139 (1971). (App. B)

STATEMENT OF THE CASE

This petition seeks review of the decision of the Court of Appeals holding

that the annual fee for CATV systems imposed by the Federal Communications Commission is a reasonable exercise of the authority delegated to the Commission by Congress.

On February 19, 1970, the Commission released a Notice of Proposed Rulemaking in Docket No. 18802, 21 F.C.C. 2d 502 (1970), in which it proposed to radically revise its then existing fee schedule.1/

The Notice of Proposed Rulemaking

1/ The Commission had adopted rules in its Report and Order in Docket 14507, 25 R.R. 1559 (1963), providing for a schedule of filing fees which became effective on March 17, 1964. The fees established therein were limited to charges established for voluntary filing of applications for television and radio stations, common carriers, safety and special services, and commercial and amateur radio licensing. They amounted to approximately 25 percent of the Commission's budget.

stated that the new fee schedule was based upon "the direct and indirect cost to the Government" of the work and services performed by the Commission; upon the "'value to the recipient' of the privileges granted" by the Commission; as well as the "public policy or interest served."2/

2/ These are the legal criteria for determining agency fees as contained in Title V of the Independent Offices Appropriation Act of 1952, 31 U.S.C. §483 (a). This law, not the Communications Act of 1934, provides the statutory authorization for the promulgation of schedules of fees by an agency. Acting under the provisions of the Appropriation Act, the Bureau of the Budget issued its Circular No. A-25 on November 5, 1953, which directed agencies to establish policies to "provide a system of fair and equitable fees which, taking account of the value to the recipient and the public policy and interest served, shall recover, to the full extent possible, the aggregate cost incurred in the conduct of these activities." S. Report 1467, 84th Cong. 2nd Sess. 7 (1956). The Bureau of the Budget revised Circular No. A-25 on September 23, 1959 (App. C).

The Commission admitted the newness of its approach, stating, 21 F.C.C. 2d 502, 503-504 (1970):

> The fee schedule being proposed herein represents a departure from the existing schedule in several major respects. The present schedule is limited to nominal fees upon the filing of applications for various types of authorizations for radio stations, operators' licenses, and communications common carriers. The approach in the newly proposed fee schedule, in addition to imposing fees in various areas where none now exist, is more closely and literally tied to the criteria stated in the above-cited Appropriation Act. Thus, the proposed fees are designed to make the Commission. . . . . "self-sustaining to the full extent possible. . . . . " in the work and services it performs in the granting of licenses, authorizations, privileges, benefits, and similar things of value. (Emphasis added)

The Commission's Notice of Proposed Rulemaking went on to state that its schedule of fees would include CATV systems, not previously subject to federal fees. The Commission argued that CATV systems

"are the subject of Commission regulation and which directly or indirectly receive what in effect is a Commission authorization tantamount to a "license"." Id. at 504.

The CATV parties commenting on the Commission's Notice of Proposed Rulemaking emphasized that the Commission's proposals did not properly consider the absence of "value to the recipient" in developing the principle of annual CATV fees.

The Commission then issued its Report and Order on July 1, 1970, 23 FCC 2d 880 (App. B).

The Commission's schedule of fees (47 C.F.R. §§1.1101-1.1120) established the following general categories: First, the fees previously in effect under the Commission's Report and Order in Docket 14507, supra, for filing applications for

radio stations, radio operator licenses or common carrier activities, were generally increased; second, a new charge was levied for grants of broadcast license applications in addition to the filing fee; third, an annual charge was imposed upon broadcast stations and common carriers. Finally, a schedule of fees for CATV operators was imposed, namely, filing fees in connection with notices filed by CATV systems regarding the carriage of television stations, and petitions filed by CATV systems seeking the waiver of or relief from Commission regulations; and, in addition, an annual charge on all CATV systems calculated at the rate of 30 cents per individual subscriber.3/

3/ This fee would rise to 40 cents per subscriber under a new fee schedule proposed by the Commission on December 13 (Public Notice, December 15).

This new fee schedule differs significantly from the Commission's prior fee schedule and the fees adopted are clearly calculated to permit the Commission to sustain its entire annual budgetary request.

Under these new rules, CATV systems pay an annual fee of 30 cents per subscriber. Based on the Commission's estimate of 3,750,000 subscribers in the CATV industry at that time, the annual fee payments were expected to recover $1,125,000.4/ The Commission filing fees would recover about $25,000. Total fees from CATV would amount to $1,150,000. The effective date of both the filing and annual CATV fees was set at August 1, 1970. Under Section 1.1116,

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4/ There are now almost 6,000,000 cable subscribers.

47 C.F.R. §1.116, all applications, petitions and notices received on and after August 1, 1970, were subject to the new fees.

In the Report and Order of July 1, 1970, and the Memorandum Opinion and Order of April 1, 1971, 28 F.C.C. 2d 139, denying reconsideration of the CATV fee schedule, the Commission rejected all arguments against the principle of the annual CATV fee. The Commission's schedule of CATV fees, with two exceptions, remained identical to those set forth in the Notice of Proposed Rule Making. The modifications made were adverse to the industry. The Commission changed one special filing fee and eliminated the exemption of small CATV systems from the annual fee.5/

5/ The Notice of Proposed Rulemaking had provided for an exemption from the annual fee of systems under 200 subscribers.

The Notice of Proposed Rulemaking and the Report and Order variously refer to different bases and approaches used by the Commission in considering "value to the recipient". The Commission admitted that "the factors we have used may not wholly or precisely reflect 'value to the recipient'." (App. B-6) The problem is not the precision of the Commission's rationale but rather the Commission's failure to formulate any clear statement of the facts actually used to determine "value" to the CATV industry.

With the first annual fee payment by CATV systems due on May 1, 1971, NCTA, on April 20, 1971, filed a Petition for Stay with the Commission, pointing out the lack of a refund provision, and requested the Commission to stay payment of the annual fees by CATV systems until the validity of

the CATV fee schedule was decided. The Motion was denied by Memorandum Opinion and Order in Docket 18802, (FCC 71-481) on April 30, 1971.

NCTA, along with several other interested parties, appealed the Commission's decision. All of the appeals were consolidated in the United States Court of Appeals for the Fifth Circuit. In a decision rendered on July 21, 1972, that court upheld the Commission in all respects (App.A). With particular reference to the imposition of an annual fee on CATV systems, the court concluded that CATV operators benefit differently than the public at large from the Commission's regulation of CATV (App. A-18).

NCTA's petition for rehearing was denied on October 2, 1972. (App.A-22)

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISION OF ANOTHER COURT OF APPEALS AS TO THE PROPER INTERPRETATION OF TITLE V OF THE INDEPENDENT OFFICES APPROPRIATION ACT.

Title V of the Independent Offices Appropriation Act of 1952, 31 U.S.C. §483 (a) (1971) (hereinafter "Appropriation Act"), authorizes the head of each federal agency to prescribe a "fee, charge or price" for "any work, service,. . . benefit,. . . franchise, license, permit, certificate. . . or similar thing of value" granted by any federal agency, which must be "fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served. . . ."

The critical concept, which has been the subject of differing judicial

interpretations, is the term "value to the recipient". Executive standards and guidelines for application of Title V are set forth by the Bureau of the Budget in Budget Circular No. A-25, dated September 23, 1959 (App. C) (hereinafter "Circular"). In that document, the Bureau stated that a reasonable charge "should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit." (App. C-2) The document goes on to say that these services include agency action which "provides special benefits. . .above and beyond those which accrue to the public at large." (App. C-2) Finally, the Circular notes that no charge should be levied for services rendered "when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as

benefitting broadly the general public." (App. C-3)

With these guidelines at hand, the Fifth Circuit upheld the Commission's fee schedule for CATV, and found that under the Commission's regulatory scheme CATV operators have received "special benefits" sufficient to justify the imposition of the $ .30 per subscriber annual fee. In so holding, the Court conceded that the Commission does not issue licenses for CATV systems, but that CATV operators have directly benefited from the Commission's various regulations "designed to keep entry into the industry open". (App. A-17) As examples, the Court cited Commission rules prohibiting various forms of cross-ownership. Another example the Court gave was the rule (at the time proposed) limiting the amount of franchise fees local governments could

charge cable operators. Finally, the Court pointed out that "the entire regulation of cable television is undergoing radical change, much of which clearly inures to the benefit of cable operators." (App.A-17) 6/

6/ CATV operators are not licensed by the Commission. Their basic operating authority is contained in franchises which are received from local municipalities and/or state regulatory bodies. Up until 1972, some two years after the subject fee schedule was adopted, the Commission's regulation of CATV consisted entirely of a set of restrictions, e.g., cross-ownership bars; signal carriage limitations; non-duplication of network programming. A new set of rules was adopted on February 3, 1972. Cable Television Report and Order, 36 FCC 2d 143 (1972). Under these rules, new CATV systems must obtain a certificate of compliance from the Commission before they can commence operations. But basic operating authority still comes first from the local franchise, and then the Commission looks over the proposed operation solely for consistency with the Commission's rules. In any event, this certification requirement comes two years after the fee schedule took effect.

This interpretation of "value to the recipient" directly conflicts with that of the United States Court of Appeals for the District of Columbia Circuit in New England Power Company et al, v. Federal Power Commission, Case No's 71-1439, 71-1539, 71-1555. (App. D) In that case representatives of the natural gas pipeline and electric industry petitioned the Court to review and set aside revised fee schedules established by the Federal Power Commission for the filing of applications under the Natural Gas Act and the Federal Power Act, and also imposing annual assessments to cover the costs of administering these programs. The Court held that the Federal Power Commission lacked the statutory authority to act and the fee schedule was set aside.

In New England Power Company, supra,

the Federal Power Commission had devised formulae for assessing annual charges against jurisdictional companies to recover the costs of regulating those companies. The plan called for the FPC to determine the administrative costs of the programs and then to subtract the revenues raised from flat filing fees. The resultant net cost was then to be assessed annually against each company in proportion to the amount of jurisdictional gas deliveries (or power sold) by the company as a ratio of the total jurisdictional gas deliveries (or power sold) by all utilities. The factual analogy to the annual CATV fees is quite clear. The authority relied upon by the FPC was the same as that relied upon by the FCC--the Appropriation Act.

The FPC, in defending its fee schedule, contended that its charges come within the Circular's terms because the charge related

to the cost incurred in discharging its "responsibilities in preventing the imposition of rates and charges which are unjust and unreasonable or preferential and prejudicial" and while such regulation "has provided continuing benefits to consumers," it has also:

> [R]edounded to the benefit of both industries by creating the economic climate for greater usage of the services of the regulated companies which in turn have further strengthened their financial stability and their ability to sell debt and equity securities required for capital additions to meet ever-increasing demands. (App. D-8)

The Court in New England Power Company completely rejected this argument. It noted that the creation of an "economic climate" is not a special service nor is a particular company the "special beneficiary" of such a climate any more than any other company or the consumer in general. The

Court went on to say that:

> [U]nder the Commission's order petitioners would be liable for the annual assessment despite the fact that they had no proceedings before the Commission for that year. In effect then, the contemplated charges would have no relation to specific services or benefits rendered. The Commission must then fall back upon its 'economic climate' argument which is obviously an overly broad benefit particularly in light of the requirement that the charges be for a 'measurable unit of service'. Furthermore, the statutory language---'to or for any person'---as well as the Budget Circular require an identifiable recipient. The Commission's inadequate response that the identifiable recipient is the whole industry assumes that each company receives a benefit directly proportional to revenue. This assumption is erroneous in that in any given year some companies may require substantial services from the Commission while others may neither require nor desire them. (Emphasis added) (App. D-8)

The Court concluded that the regulation of the gasoline and power companies was primarily for the benefit of the public, and therefore that:

> There is something fundamentally wrong in assessing charges on the basis of benefit to the company when the Commission

> must benefit the public. In the absence of Congressional mandate to the contrary, we conclude that monies for the administration of programs benefitting the general public should come from the general fund of the treasury. (Emphasis added) (App. D-9)

Thus, the conflict in the decisions is both clear and direct since the CATV operators are in the same posture as the gas and power companies. In both cases, the regulatory agencies calculated the annual direct and indirect costs of regulating the subject industries, subtracted the sums collected from filing fees, and devised a method of collecting the remainder annually from all members of the industry. In both cases the method devised bore no relationship to specific services or benefits rendered. In fact, both methods were based on economic criteria; for gas and power companies, the amount of gas delivered or

power sold was the criterion; for CATV systems, the number of subscribers. Further, in both cases the beneficiaries of regulation are obscure and the service can be primarily considered as broadly benefitting the general public. In addition, the gas and power companies receive their organic operating authorization from the agency whereas CATV operators do not. Finally, the D.C. Circuit completely rejected the "economic climate" argument while the Fifth Circuit clearly adopted it. In sum, the Fifth Circuit and the D.C. Circuit have interpreted the Appropriation Act standard of "value to the recipient" quite differently under analogous factual situations. Without guidance from this Court, federal agencies will not know the circumstances under which annual assessments may properly be levied. National policy requires a uniform standard, which only

the Supreme Court can supply.7/

This conflict justifies the grant of certiorari to review the judgment below.

2. THE DECISION BELOW ENLARGES THE POWER OF FEDERAL AGENCIES TO ASSESS FEES CONTRARY TO CONGRESSIONAL INTENT

The legislative history of the Appropriation Act evidences that the Congress did not intend to confer upon the Commission the power to levy tribute on persons who were simply subject to its jurisdiction. Under the Appropriation Act, the fees to be charged, if any, are conditioned on their being something of "value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency . . .to or for any person . . . ." The House Appropriations Committee in reporting the Appropriation Act stated that the motivation for authorizing

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7/ The FPC has asked this Court for an extension of time in which to file a petition for certiorari in New England Power Company, supra.

federal agency fees resulted from the fact that the government "is not receiving full return from many of the services which it renders to special beneficiaries" (Emphasis added). H. R. Rept. 384, Committee on Appropriations, 82nd Cong., 1st Sess. (1951). The Senate imposed the same guidelines, S. Rept. 2120, Committee on Expenditures in the Executive Department, 81st. Cong., 2nd Sess. (1950). The legislative history makes the clear distinction between services which accrue to such special interests, and services the benefits of which inure to the public and for which the Government assumes the

cost.8/

It is clear from the regulatory history of CATV that FCC regulations have not been designed to "benefit" cable interests. On the contrary, the basis for Commission jurisdiction has been the potential economic impact of CATV technology on other broadcast media, and this has been used to justify the Commission's "ancillary" regulation of CATV. United States v. Southwestern Cable Co., 392 U.S. 157, 178 (1968). The Fifth Circuit's list of "valuable benefits" that the industry

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8/ Congress was careful to make the critical distinction between a "fee"and a "tax". A fee bears a reasonable relationship to the extent and nature of services rendered and the benefits received beyond those received by the public generally. Hanson v. Griffith, 204 Misc. 736, 124 N.Y.S. 2d 473 (1953); Smith v. Carbon County, 90 Utah 560, 63 P. 2d 259, 262 (1936). Statutory and regulatory authority permit the imposition of fees, not taxes.

has received misses the point entirely. All of these regulations were clearly enacted to benefit the public, not the CATV industry as special beneficiaries. See Report and Order in Docket No. 18509, 21 FCC 2d 307 (1970); Report and Order in Docket No. 18397A, 23 FCC 2d 816 (1970). Furthermore, regulations designed to keep "entry into the industry open" are not "measurable units of service" benefitting a specific company as required by the Circular. This characterization of the regulations is analogous to the "economic climate" argument put forth by the Federal Power Commission and rejected by the D. C. Circuit.

The Fifth Circuit also noted that the question was not whether the industry agreed with the regulations but whether the industry benefited in a manner different from the public at large. The Court cited the scarcity

of television outlets which exists under the Commission's broadcast regulations and which creates much of the economic value attached to distant signals imported by CATV. Here the Court has concluded that "benefits" flow to the CATV industry as a result of its broadcast regulation. The latter is even further removed from the direct connection required by the Appropriation Act and is not what the CATV industry is allegedly paying for, i.e., CATV regulation from which it receives direct benefits. Any benefit the CATV industry receives from the Commission's regulation of broadcasting is purely derivative and incidental, thus clearly insufficient as a basis for imposing fees. This is the vital distinction between the broadcast regulatory scheme and the CATV regulatory scheme. In addition, broadcasters receive a valuable monopoly from the Commission in the form of a license, without

which they cannot go into business.9/

It is important to note that it is only the annual assessment which is under attack, not the fees for the filing of applications, jurisdiction for which the Commission undoubtedly has under Aeronautical Radio, Inc. v. U. S. 335 F. 2d 304 (7th Cir. 1964), cert denied, 379 U. S. 966 (1965). Where an application or pleading is involved, the fee is directly related to a voluntary act. Here the additional annual charges arise out of no voluntary action initiated by the charged company. In fact, as in New England Power Company, supra, a company would have to pay

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9/ Even a licensed entity must receive a "benefit" in connection with a fee. The annual fees overturned in New England Power Company, supra, were being levied against licensed entities, but the Court's reversal was based on the lack of a "benefit".

despite the fact that they had no proceedings before the Commission that year. It is submitted that the lack of a relationship between services rendered and annual assessment is fatal to the Commission's fee schedule and goes beyond the Congressional mandate.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-1621

CLAY BROADCASTING CORPORATION OF TEXAS,
Petitioner,

versus

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION,
Respondents.

No. 71-1990

NATIONAL ASSOCIATION OF BROADCASTERS,
Petitioner,

versus

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

Petitions for Review of an Order of the Federal Communications Commission (Texas Case)

(July 21, 1972)

Before GEWIN, AINSWORTH and SIMPSON,
Circuit Judges.

GEWIN, Circuit Judge: These consolidated petitions for review seek to set aside the revised schedule of fees of the Federal Communications Commission which became effective August 1, 1970.[1] The petitioners are representatives of the broadcasting and cable television industries and include several individuals and corporations which have interests in particular broadcast properties. While the contentions of the several parties vary widely the petitioners collectively present a broad challenge to the Commission's authority and the reasonableness of its order imposing the fees adopted July 1, 1970, *Schedule of Fees*, 23 F.C.C.2d 880, 35 Fed. Reg. 10988. Upon review we find that the revised fee schedule is a reasonable exercise of the authority delegated to the Commission by Congress.

The concept of user charges was explicitly authorized by Congress in Title V of the Independent Offices Appropriation Act of 1952.[2] The Federal Com-

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[1] This Court has jurisdiction to review the Commission's order under 47 U.S.C. § 402(a) and 5 U.S.C. § 701 et. seq.

[2] "It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any persons (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as

munications Commission adopted its first fee schedule in 1963 covering all areas of Commission regulation at the time. Report and Order, *Fees*, 34 F.C.C. 811 (1963). That schedule was challenged before the Seventh Circuit Court of Appeals, which affirmed the Commission's order, *Aeronautical Radio, Inc. v. United States*, 335 F.2d 304 (7th Cir. 1964), *cert. denied*, 379 U.S. 966 (1965). Shortly thereafter the Commission announced a policy of keeping its fees schedule under continuing review. See *Fees*, 1 F.C.C.2d 1349 (1965).

On February 18, 1970, the Commission issued a Notice of Proposed Rule Making looking towards the broad revision of its fee schedule. *Schedule of Fees*, Docket No. 18802, 21 F.C.C.2d 502, 35 Fed. Reg. 3815 (1970). The Commission noted that Congress had urged that the activities of the Commission become more nearly self-sustaining and proposed a new schedule of fees which would generate estimated fees approximating the Commission's budgetary request for fiscal year 1971. These fees included increases in those areas which were already subject to at least nominal fees and proposed new fees in areas where the Commission had only recently exercised jurisdiction to regulate —

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the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy, or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts. . ."

31 U.S.C. § 483a (1971).

community antenna television (CATV) and radio frequency equipment testing and approval.

In addition to levying application fees, the Commission proposed to give explicit recognition to the "value to the recipient" of the privileges granted, as well as the public interest served and the direct and indirect cost to the Government by imposing fees relating to the value of the authorization of the license.[2] The Commission proposed fees for the grant of applications for assignment of a license or a transfer of interest in a broadcast station which reflected the value which the parties to the transaction placed on the sale. It also proposed an annual fee for broadcast stations based on the licensees' own commercial rates. In the CATV field the Commission proposed to tie the annual fee to the number of subscribers in each system.

After receiving a large number of comments from interested parties, the Commission adopted the revised Schedule of Fees on July 1, 1970. The document was

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[2] "... [T]he proposed fees are designed to make the Commission '* * * self-sustaining to the full extent possible * * *' in the work and services it performs in the granting of licenses, authorizations, privileges, benefits, and similar things of value. Moreover, the rationale for the formulation of the new fee schedule gives explicit recognition, in appropriately varying degrees, to the 'value to the recipient' of the privileges granted, as well as the public interest served and the direct and indirect cost to the Government. Therefore, in addition to a continuation of the existing concept of a fee upon filing of an application seeking an authorization, the new fee schedule adopts the concept of a separate fee reflecting our consideration of the 'value to the recipient' factor involved in authorizations and licenses."
21 F.C.C.2d at 503-04 (1970).

officially released on July 2, 1970, *Schedule of Fees*, 23 F.C.C.2d 880, and was printed in the July 8, 1970 issue of the Federal Register, 35 Fed. Reg. 10988. As indicated in the earlier Notice of Proposed Rule Making[4] the revision abolished broadcast license renewal fees in favor of annual operating fees which amounted to 24 times a radio station's highest one-minute spot announcement rate, but not less than $52, and 12 times a television station's highest 30-second spot announcement rate, but not less than $144. The assignment and transfer fee to be paid immediately following the consummation of the transfer was set at 2% of the consideration paid. The new schedule was to be effective August 1, 1970 on all grants made on or after that date. The Commission however excepted from the grant fees those applications filed prior to July 1, 1970, the date of the adoption of the new schedule. The Commission levied an annual fee on CATV systems equal to $0.30 multiplied by the number of subscribers of the system.

Thereafter a number of petitions for reconsideration were filed with the Commission concerning various aspects of its fee schedule. These petitions, in so far as they are material to this case, were subsequently denied, 28 F.C.C.2d 139 (1971). All petitions for review of the Commission's fee schedule rulings, filed pursuant to 47 U.S.C. 402(a) in this and other circuits, have been transferred to this court and consolidated in this case. We consider each of the challenged fees in turn.

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[4] 21 F.C.C.2d at 507 (1970).

I. *Broadcast Annual License Fee*

The National Association of Broadcasters (NAB), a national trade organization with a substantial number of radio and television station members, seeks a review of both the annual license fee and the 2% grant fee on assignment and transfer applications. The NAB contends that the annual fee is in effect a discriminatory tax on radio and television. It acknowledges that the Commission may impose fees upon the broadcast services and that the Commission is not limited to the imposition of nominal fees only. However the NAB contends this annual license fee is unreasonable because it reflects that the Commission's concern was only with recovering the full amount of the agency's appropriation. This, it contends, violates the statutory guidelines provided in the act which authorizes agency fees[8] that are "fair and equitable" taking into account: (1) the cost to the Government; (2) the value to the recipient; and (3) the public policy or interest served. It argues that not all of the Commission's activities in the broadcast section are of specific benefit to the stations. The Commission and the stations themselves expend a significant amount of time and effort in activities which serve the general public at large. But the NAB complains, "the fact is the schedule of fees for the broadcast services hands to commercial licensees *all* of the costs of commission activities in the broadcast field when in fact all of the services are *not* rendered for the benefit of commercial licensees."

In our judgment the NAB misconstrues the legal requirements which the Commission must meet in im-

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[8] 31 U.S.C. § 483a. *See* note 2 *supra*.

posing fees and we believe that its position demonstrates a myopic misconception of the "benefits" which the Commission confers on commercial licensees. In the first instance, the weighing of these statutory factors or "whether * * * all * * * must play a quantitative share" in the judgment made, was for the Commission. *Aeronautical Radio, Inc. v. United States*, 335 F.2d 304, 309 (7th Cir. 1964) *citing Secretary of Agriculture v. Central Refining Roig Co.*, 338 U.S. 604, 611, 612, 94 L.Ed. 381, 388, 389, 70 S.Ct. 403, 407 (1950). Additionally Bureau of the Budget Circular A-25 which provides "The maximum fee for a special service will be governed by its total cost and not by the value of the service to the recipient" does not compel the Commission to precisely pro-rate its costs in performing the various services in the Broadcast Bureau and limit the fee for each service to its precise administrative cost.[6] Indeed such precision would be difficult if not altogether impossible to achieve.[7]

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[6] We find no merit in the NAB's contention that these fees are in reality an unlawful tax because the money involved is not approximately equal to the *amount of work* rendered by the Commission in behalf of the party against whom the charge is made. The Commission is clearly entitled to charge such fees to recover its costs as are fair considering the value to the recipient, public policy and other pertinent facts. 31 U.S.C. § 483a. By the very terms of the statute "value to the recipient" is not limited to the amount of work performed but also includes any "... service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or other similar thing of value or utility. . ." *Id.*

[7] E.g., processing an application for increase in a station's power would appear to be a cost properly chargeable to both the applying station for expansion of its signal contour, and to those stations which might receive interference from the power increase for the protection of their signal contours.

The record indicates that the Commission estimated the direct and indirect costs of regulating the broadcast industry to be $9,661,200 or 38.8% of the Commission's fiscal year 1971 budget. 23 F.C.C. 2d at 882. After giving consideration to the other factors,[a] the Commission settled on a schedule in which the broadcast fees were estimated to produce $9,600,000. That figure represented less than 0.3% of the approximately $3.5 billion gross revenues generated by the broadcast industry in 1968. In exchange, commercial licensees receive an exclusive right to operate for a profit on a portion of the public's electromagnetic spectrum. The Commission regulation of the broadcast industry generally provides individual licensees with continuing protection from technical interference as is consistent with the public interest and maintains the market structure which makes it possible for commercial broadcasting to operate at a profit. We therefore are unable to find that the Commission acted unreasonably or arbitrarily in imposing on commercial licensees an annual fee which is part of a schedule calculated to fully recover the direct and indirect costs of regulating the broadcast industry.[b]

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[a] I.e., the "value to the recipient" and "public policy" factors. 23 F.C.C.2d at 882.

[b] We also find no merit to the NAB's contention that the Commission's fees are improper because they fail to take into consideration the large number of unprofitable stations. In the response to the petitions for reconsideration the Commission noted:

> "The Commission is keenly aware of the significant number of unprofitable broadcast stations and of the contention that the annual operating fees would cause a diminution of program services by broadcast stations, particularly in the marginal and unprofitable stations. We would emphasize, however, that no evi-

II. *Two Percent Grant Fee*

The NAB and a number of individuals with particular broadcast interests[10] also challenge the imposition of a fee of 2% of the consideration paid following consummation of the assignment of a license or transfer of control as approved by the Commission. 23 F.C.C.2d at 903. We find no merit to the NAB's contention that the 2% figure is arbitrary or unfair because it does not precisely reflect the different amounts of effort the Commission expends in considering the applications of varying complexity.[11] Furthermore, we are unable to accept its argument that the amount paid solely reflects the transferors' assets and good will,

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dence has been submitted in support of these assertions, and that since all broadcast licensees have established financial qualifications sufficient to carry on their broadcast operations, it is highly unlikely that the new fee schedule would constitute a significant burden in a broadcast station's total operation. * * * The Commission will, of course, maintain a continuing review in this area, and if the facts indicate a change is necessary, appropriate revisions will be made. Meanwhile, any broadcast licensee whose financial situation is such that the annual operating fees will cause a diminution of program service to the public, or otherwise materially affect his operation, may petition the Commission for a waiver of the annual operating fee for a given period, and show good cause for relief requested." 28 F.C.C.2d 143 (1971).

[10] Clay Broadcasting Corporation of Texas; WBLI, Inc.; Dorothy Meythaler, Executrix of the Estate [Last Will and Testament] of Merlin J. Meythaler and Merton J. Gonstead d/b/a Livingston County Broadcasting Company and Dorothy Meythaler and Merton J. Gonstead d/b/a Pontiac FM Broadcasting Company; Steuben Broadcasters, Inc.; Forward Communications Corporation.

[11] See f.n. 6, *supra*.

or its inference that the Commission has already been compensated by the fee paid when the application for transfer was filed for any work performed for the transferee.

In transferring the license the Commission is granting to the transferee a privilege similar to the grant of a construction permit for a new station. In considering the value of the transfer the Commission noted "unlike construction permits, which often involve competitive applications and comparative hearings and which simply authorize a new station of undetermined profitability, assignments of license and transfers of control are insulated from competition and concern a going business whose profitability is reflected in a judgment by the parties who have reached agreement on the price to be paid." 21 F.C.C.2d at 506-07. Given this explicit consideration of the "value of the benefit conferred" with the cost to the government and public policy involved we are not persuaded that a grant fee measured by 2% of the consideration paid is unreasonable.

A more serious question is presented by the individual petitioners with respect to the time schedule adopted by the Commission for the institution of these grant fees. In the schedule the Commission set an "effective" date of August 1, 1970, after which the grant fees would be imposed. However the Commission exempted from this fee those applications granted after August 1, 1970 but which were filed with the Commission prior to July 1, 1970. Two of the individual petitioners, Meythaler and Steuben, filed applications on July 1 and 2, 1970, but prior to the public announcement that the new fee

schedule had been adopted and that it would apply to the grant of their applications. Essentially they contend that they relied on the prior fee schedule in negotiating their contracts and that the new rule has the effect of retroactively applying the grant fee to them.

The remaining petitioners, Clay, Forward and WBLI, all filed applications for transfer or assignment during July 1970 but after the Commission had published the new schedule. These petitioners contend that notwithstanding the Commission's assignment of August 1, 1970 as the "effective" date, the real "impact" date was July 1, 1970. They therefore argue: (1) the commission erred in distinguishing the filing date from the "effective" date; (2) the Commission violated the Administrative Procedure Act[12] and its own rules[13] in providing no notice or less than 30 days notice prior to the "effective" date of the rule; and (3) that once the Commission decided to afford an exemption for some applications on file prior to the effective date it could not lawfully exclude July filed applications from this exception. Although we might well have done otherwise if the question was ours to decide in the first instance, we can not find that the Commission's chosen "effective" date and its exemption are arbitrary, unreasonable or unlawful.

Despite arguments to the contrary we are not convinced that the grant fee is being applied retroactively to applications filed in July. The fee is not automatically imposed on all filed applications for assignment or

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[12] 5 U.S.C. § 553(d) (1971).
[13] 47 C.F.R. § 1.427 (1971).

transfer. The 2% fee is charged only after the Commission has processed the application and decided to grant the transfer or assignment. Even then the fee is not required unless and until the consummation of the assignment because of the uncertainties of the date of closing and other factors.[14] The closing of the transfer or assignment following Commission approval is an event of sufficient independence from the mere filing of the application that the imposition of a fee upon transfers to be made in the future is not a retroactive fee upon those applications already on file but not yet granted. Thus we are unable to conclude that the Commission acted arbitrarily in using the date of grant for the "effective" date of the fee instead of the date of filing. *See Buckeye Cablevision, Inc. v. F.C.C.*, 387 F.2d 220, 227 (D.C. Cir. 1967).

In the Commission's Report and Order adopting the new fees it stated that the fees were being made "effective" on August 1, 1970, although it was aware that 30 days' official notice by publication in the Federal Register was not possible.[15] The Commission noted that it believed that good cause existed for an August 1, 1970, effective date citing three factors: (1) widespread notice in fact would be provided affected parties; (2) a first of the month effective date was required for administrative pro-ration of yearly fees; and (3) that in accordance with Congressional directives the Commission wanted the fee schedule to cover as much of fiscal 1971 as reasonably possible. We find that the Commission's statement of "good cause" suf-

[14] 23 F.C.C.2d at 888.
[15] 23 F.C.C.2d at 885.

ficiently meets the requirements of both the Administrative Procedure Act and the Commission's rules.; *See Buckeye Cablevision, Inc.*, 387 F.2d at 228 n. 34; *cf. Pent-R-Books, Inc. v. United States Postal Service*, 328 F. Supp. 297, 312 (E.D. N.Y. 1971).

We are also not convinced that the Commission either was required to include or was unreasonable in excluding July filed applications for transfer or assignment from the exception to the grant fee afforded applications filed prior to July 1, 1970. There is something arbitrary about the drawing of any administrative line. To some extent whether a line appears to be "reasonable" to a party depends upon which side of the line the party falls. The difficulty in drawing fair and reasonable lines in the communication industries is considerably exacerbated by the rapid technical and economic expansion of the various media. *E.g., Buckeye Cablevision, Inc. v. F.C.C.*, 387 F.2d 220 (D.C. Cir. 1967) ['Grandfather clause' permitted systems carrying distant signals before the regulations were announced to continue to do so]; *Kessler v. F.C.C.*, 326 F.2d 673 (D.C. Cir. 1963) ['Freeze' on new station applications effective when announced although applications then on file would be processed].

In the present case the Communications Act has a built in 30 day holding period on applications for assignment or transfer before the Commission may grant them.[16] In excepting those applications already on file by July 1, 1970, the Commission excluded from the grant fee those applications which it had the authority

[16] 47 U.S.C. § 309(b) (1971).

to grant prior to the August 1, 1970 effective date of the fee.

In response to criticism following the adoption of the fees the Commission noted that it had established this exception in order to eliminate any claim that action on matters filed prior to the date of adoption of the new fee schedule might be delayed until on or after August 1, 1970, so as to be able to exact the new grant fees. 28 F.C.C. 139, 141 (1971). The Commission also noted that no claim of surprise as to the adoption of the new fee schedule can properly be made, since the notice of proposed rule making had been issued in February 1970, 4-1/2 months prior to July, 1970, and since the Commission's representations to the Congress that a new fee schedule would be adopted by the beginning of fiscal year 1971 had been widely reported. *Id.* As in *Kessler*, "The issue is not what we might have done ourselves or what we might think would have been more reasonable. The issue is whether what the Commission did, in the light of the reasons it gave, was unreasonable and capricious." 326 F.2d at 686. Here, as in *Kessler*, we cannot conclude that it was.

III. *Annual Fee for CATV*

The National Cable Television Association, Inc. (NCTA) and the California Community Television Association jointly challenge the portion of the Commission's fee schedule which imposes an annual fee of $30 per subscriber on all CATV systems. NCTA contends that the Commission lacks the authority to impose any sort of an annual fee in cable television, and that in any event this annual fee fails to meet the statu-

tory requirements[17] and amounts to a tax because it fails to consider the statutory element of "value to the recipient" (i.e., the CATV operators) conferred by the FCC regulation of the industry. Finally NCTA asserts that the fees charged CATV operators are based upon a miscalculation of the actual costs of regulating CATV and that the fees are disproportionately higher for CATV than for other regulated industries. We find no merit in any of these contentions.

The Commission's efforts to regulate CATV have not been consistent.[18] The new technology which made cable television possible was thought at first to fall wholly between the cracks of the Commission's statutory authority,[19] but in recent years the Commission has asserted an increasingly expansive jurisdiction over cable TV. The potential economic impact of CATV technology on other broadcast media spawned the initial regulatory efforts by the FCC.[20] This collateral impact on other regulated media has been used to justify the Commission's "ancillary" regulation of CATV. *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178, 20 L.Ed.2d 1001, 1016 (1968).[21] In *General Tele-*

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[17] 31 U.S.C. § 483a (1971).

[18] United States v. Southwestern Cable Co., 392 U.S. at 161 to 167, 20 L.Ed.2d at 1007 to 1010. *See also*, Note, The Wire Mire: The F C C and CATV, 79 Harv. L. Rev. 366 (1965).

[19] *See*, 1959 Report and Order, 26 F.C.C. 403, 426-31.

[20] Carter Mountain Transmission Corp. v. F.C.C., 32 F.C.C. 459 (1962) *aff'd*, 321 F.2d 359 (D.C. Cir. 1963), *cert. denied* 375 U.S. 951 (1963).

[21] The Court stated: "There is no need here to determine in detail the limits of the Commission's authority to regulate CATV. It is enough to emphasize that the authority which we recognize today under § 152(a) is restricted to that reasonably ancillary to the effective performance of the Commission's various

phone Co. of Southwest v. United States, 449 F.2d 846 (5th Cir. 1971) we upheld the Commission's rules which prohibited telephone companies from furnishing CATV services in their telephone service areas and restricted their construction of cable facilities. Although the question in that case was whether the Commission had properly exercised its unquestioned authority over common carriers,[22] we recognized that the development of CATV is part of the broader purpose of the Commission under 47 U.S.C. §151.[23] 449 F.2d at 854.

Most recently the Supreme Court in *United States v. Midwest Video Corp.*, ___ U.S. ___, ___ L.Ed.2d ___, 40 L.W. 4626 (June 7, 1972), has held that the Commission has jurisdiction under 47 U.S.C. § 152(a) over CATV systems and operations which may be exercised to protect and promote the objectives for which the Commission had been assigned jurisdiction over broadcasting. ___ L.Ed.2d at ___, 40 L.W. at 4632. The court upheld the Commission's authority to require that CATV systems with more than 3,500 subscribers operate to a significant extent as a local outlet

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responsibilities for the regulation of television broadcasting . . . We express no views as to the Commission's authority, if any, to regulate CATV under any other circumstances or for any other purposes." 392 U.S. at 178, 20 L.Ed.2d at 1016.

[22] 47 U.S.C. § 214 (1971).

[23] "For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and communication service with adequate facilities at reasonable charges, . . . there is created a commission to be known as the 'Federal Communications Commission' . . ." 47 U.S.C. § 151 (1971).

by originating programing and make available facilities for local programing.

It seems apparent to this court that under the Commission's regulatory scheme which existed from the time of the adoption of these fees until the present, CATV operators have received "valuable benefits" sufficient to justify the imposition of the annual fee. Although the Commission does not issue licenses for CATV systems as it does for broadcast stations, CATV operators have directly benefited from the Commission's various regulations designed to keep entry into the industry open.[24] The Commission has also proposed rules limiting the amount of franchise fees which local governments could charge cable operators.[25] Indeed, as the Commission points out, the entire regulation of cable television is undergoing radical change, much of which clearly inures to the benefit of cable operators.[26]

It is true that some of the Commission's direct regulation of CATV has tended to restrict cable development in order to protect other media.[27] But the inquiry

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[24]*See* General Telephone Company of the Southwest v. United States, 449 F.2d 846 (5th Cir. 1971) [in which NCTA intervened in support of the Commission's regulations]. The Commission has restricted television broadcast station and translator station ownership of CATV systems in their service area, 23 F.C.C.2d 816 (1970), prohibited broadcast network ownership of cable systems, 23 F.C.C.2d 816 (1970), and proposed rules banning cross-ownership of newspapers and cable systems in the same area, 23 F.C.C.2d 833 (1970).

[25]Notice of Proposed Rule Making, *CATV*, Docket No. 18892, 25 F.C.C.2d 50, 53 (1970).

[26]Cable Television Proposals, 31 F.C.C.2d 115 (1971).

[27]E.g., Buckeye Cablevision, Inc. v. United States, 438 F.2d 948 (6th Cir. 1971).

under 31 U.S.C. 483(a) is not whether the regulated industry likes or agrees with all the regulations prescribed, but whether the members of the industry have benefited in a manner different from the public at large from the regulatory scheme provided by the Commission. CATV operators in effect merchandise the broadcast signals which the Commission has authorized by its regulation. The scarcity of television outlets which exists under the Commission's regulation of the broadcast market structure creates much of the economic value of the distant signal importation by CATV. It is therefore clear the CATV operators do receive benefits of real value from the Commission's regulation of CATV and the related broadcast media.

We have already observed in Section I of this opinion that the statutory factors of benefit, costs and policy are for the Commission to weigh. *Aeronautical Radio, Inc.*, supra. In this instance the Commission observed:

> "47. The 30-cents-per-subscriber-annual-fee formula has been attacked on diverse grounds: that it fails to take into consideration that different systems charge different subscription rates; that operating costs vary even when subscription rates are the same; that in some cases local franchise agreements bar systems from passing increased costs on to subscribers via rate increases; and that the 30-cents-per subscriber fee would cut sharply into narrow profit margins.
>
> 48. The very diversity of these criticisms (which were not accompanied by specific sup-

porting data) suggests that it would be exceedingly difficult to devise a formula that would be proof against all attack. In defense of the formula adopted, we would note: (i) that generally available information about the CATV industry indicates that subscription rates tend to cluster at about $5 per month or a bit higher; (ii) that 30 cents per subscriber per year appears to constitute in the typical case only one-half of 1 percent of CATV system gross revenues from subscription fees, if that much; (iii) that, particularly in view of the smallness of the fee, alternative formulas involving more complicated calculation to verify adequacy of fee payment might be more precise but, under the circumstances, are unnecessary; (iv) that the Commission lacks reliable information about the operations and internal finances of CATV systems, but is currently readying new rules and procedures which will enable it to obtain such information, via annual, reporting by CATV systems; and finally, (v) that as the Commission obtains such information it will use it for periodic review of the equity of its CATV fee schedule."

23 F.C.C. at 897-88 (1970).

The Commission's formulation clearly evidences consideration of the benefits to CATV systems as measured by the number of subscribers, the direct and indirect costs of the Commission's efforts to regulate the industry, and the Congressional policy that the Commission make its work of specific benefit "self-

sustaining to the full extent possible," under 31 U.S.C. 483a. Considering all factors revealed by the record the balance which the Commission struck was not unreasonable or arbitrary in our opinion. If experience shows that the Commission's fees are unfair, unworkable or have an adverse effect on competition in the CATV industry the Commission can be expected to revise them in order to meet the exigencies of the competitive situation. *General Telephone Company of the Southwest v. United States*, 449 F.2d 846, 858 (5th Cir. 1971).

For the reasons stated we find that the Commission did not exceed or abuse its statutory authority in imposing the fees contained in its July 1, 1970, Report and Order. The order of the Commission is in all respects AFFIRMED.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 71-1621

CLAY BROADCASTING CORPORATION OF TEXAS,

Petitioner

versus

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION,

Respondents.

No. 71-1990

NATIONAL ASSOCIATION OF BROADCASTERS,

Petitioner,

versus

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

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(October 2, 1972)

ON PETITION FOR REHEARING

Before GEWIN, AINSWORTH and SIMPSON, Circuit Jud

PER CURIAM:

IT IS ORDERED that the motion of the National Association of Broadcasters for leave to file a petition for rehearing out of time in the above causes is hereby GRANTED, but the Court does not approve of the casual manner evidenced by the actions of the Petitioner by filing its petition and brief out of time after the Court had granted it an extension of time.

IT IS FURTHER ORDERED that the petitions for rehearing filed in the above entitled and numbered causes be, and the same are hereby DENIED.

APPENDIX A-23

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

October Term, 1971

Your No. FCC 18802)

CLAY BROADCASTING CORPORATION OF TEXAS,
Petitioner,

versus

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION,
Respondents,

- - - - - -

Petition for Review of an Order of the Federal Communications Commission (Texas Case)

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Before GEWIN, AINSWORTH and SIMPSON,
Circuit Judges

JUDGMENT

This cause came on to be heard on the petition of Clay Broadcasting Corporation of Texas for review of an order of the Federal Communications Commission, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the Federal Communications Commission in this cause be, and the same is hereby, affirmed;

It is further ordered that petitioner pay to respondents the costs on appeal to be taxed by the Clerk of this Court.

July 21, 1972

Issued as Mandate: August 14, 1972

F.C.C. 70-694

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SUBPART G OF PART 1 OF THE COMMISSION'S RULES RELATING TO THE SCHEDULE OF FEES	Docket No. 18802

REPORT AND ORDER

(Adopted July 1, 1970; Released July 2, 1970)

BY THE COMMISSION: COMMISSIONER COX CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT; COMMISSIONER WELLS DISSENTING.

1. In a Notice of Proposed Rule Making adopted February 18, 1970,[1] the Commission set forth its proposal to revise the existing schedule of fees on a broad basis. While the present proceeding is a reflection of the Commission's continuing review of this subject matter, its proposals reflect widespread changes in the existing fee schedule, designed insofar as possible to return to the federal government the amount of funds appropriated by the Congress for the Commission for FY-1971. Comments, both formal and informal, were received in large number and have been fully considered in the Commission's continuing analysis of such matters.[2]

2. The Commission first adopted rules providing for a schedule of application filing fees in 1963 (Docket No. 14507, FCC 63-414, 28 Fed. Reg. 4658; FCC 63-856, 28 Fed. Reg. 10911) and the initial fee schedule became effective on March 17, 1964. In adopting that fee schedule, the Commission stated that it would undertake a continuing review of the schedule. This continuing review has since been carried forward on a regular basis and a number of changes and modifications have since been made in the original schedule. In the current review and its attendant changes, we have fully considered the thrust of the legislation which vested authority in the Commission to establish the original schedule. The pertinent provision which is included in Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. § 483(a)) and is applicable to all Federal agencies, reads as follows:

> It is the sense of the Congress that *any work, service publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency* (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations,

[1] A Supplemental Notice was adopted and issued on March 4, 1970.
[2] A list of the parties filing comments, formal and informal, would be too large to warrant reprinting.

partnerships, corporations or businesses), except those engaged in the transaction of official business of the Government, *shall be self-sustaining to the full extent possible and the head of each Federal agency is authorized by regulation* (which, in the case of agencies in the Executive Branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) *to prescribe therefor such fee, charge, or price, if any, as he shall determine,* in case none exists, or redetermine in case of an existing one, *to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts,* and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided,* That nothing contained in this Title shall repeal or modify existing statutes prescribing basis for calculation of any fee, charge or price, but this provision shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of any such fee, charge or price. [Italic supplied.]

3. The fee schedule initially adopted in 1964 established nominal fees and produced fee revenues which approximated 25% of the Commission's annual appropriation at that time, and subsequent changes in the fee schedule have generally maintained the same ratio between fee revenues and our annual appropriations. However, after judicial affirmation of the Commission's authority to establish a schedule of fees, the Bureau of the Budget has regularly urged the establishment of higher fee schedules and many other agencies have taken steps to adopt fee schedules calling for higher fees. In 1969, the House Appropriations Subcommittee expressed its concern about the Commission's fee schedule and stated that,

> The Committee also feels that fee charges should be further reviewed and adjusted upward with the objective of assuring that the activities of the Commission are more nearly self-sustaining. The Committee will expect a report on these items during the budget hearings for 1971.[3]

Thereafter, the Conference Committee on the Independent Office Appropriations Bill, 1970, supported the views stated above, stating with respect to our fee schedule that

> The committee of conference is agreed that the fee structure for the Commission should be adjusted to fully support all its activities so the taxpayers will not be required to bear any part of the load in view of the profits regulated by this agency.[4]

Since the issuance of the Notice of Proposed Rule Making in this proceeding, in hearings on the Commission's appropriation for FY–1971, both the House and Senate Appropriations Subcommittees reiterated their view that the Commission should establish its schedule of fees on a basis which would make it self-sustaining to the fullest extent possible. The fee schedule adopted herein, as a revision of the initial proposal, has been prepared in the light of these executive and congressional directives and, based upon a reasonable projection of our activities during the coming fiscal year, should produce fee revenues which will generally approximate our estimated expenditures for FY–1971.[5]

4. Comments received from various industries affected by the Commission's fee schedule proposed in the Notice indicated a wide disparity

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[3] House Report 91–316, June 19, 1969, pages 7 and 8.
[4] House Report 91–849, November 18, 1969, page 6.
[5] This includes not only the expected regular appropriation of $24,900,000, but also additional expenditures deriving from the more recent federal salary increase.

between the resulting fee revenues as estimated by the Commission and as estimated by the industries affected. Though comments of this nature were widespread, they had particular emphasis in the area of common carrier regulation and equipment approval action. Particular scrutiny has been paid to these contentions and the fee schedule adopted herein now sets forth not only more simplified methods for establishing the amount of individual fee charges, but also a schedule of charges which have been carefully designed to reach an estimated total revenue within a reasonable range of the Commission's appropriations for FY–1971. In arriving at this goal, the Commission has given considerable but not exclusive consideration to its allocation of the cost of Commission activities as set forth in its Supplemental Notice of March 4, 1970. This breakdown of activity costs, both in terms of dollars and in terms of percentages of the total Commission budget request, is as follows:

		Percent
Broadcast	$9,661,200	38.8
Cable television	1,145,400	4.6
Chief engineer	323,700	1.3
Common carrier	4,631,400	18.6
Field engineering	1,294,800	5.2
Safety and special radio	7,843,500	31.5

It must be emphasized that these figures reflect only the cost factor and that other criteria such as "value to recipient" and "public policy and interest served" have also been considered in establishing the fee schedule set forth herein on a practicable, fair and equitable basis. In this connection, numerous comments were to the effect that where the Commission determined that public policy considerations warranted various exemptions from the fee schedule, e.g., state and local governments, non-profit licensees, etc., the cost of regulation of such activities should in effect be deducted from the total of fee revenues sought to be obtained by the Commission. These comments overlook the fact that there is no requirement that individual fee charges must be tied directly to processing costs or that individual activity costs set an outer limit for fee revenues resulting from such activity. The statutory objective is that the Commission shall establish a fee schedule which, after consideration of all of the factors referred to in 31 U.S.C. § 483(a), should produce total revenues which would make the Commission self-sustaining to the fullest extent possible. This general objective encompasses within it not only appropriate variations amongst the different Commission activities and staff units, but also appropriate variations between annual appropriations which may be enacted by the Congress some time after the beginning of the fiscal year, and may reflect changes from our budget request, and estimated fee revenues which must be based only upon projections of future activity and of the future impact of fee charges on the extent of such activity.[8] As revised from the initial proposal and keeping in mind the imponderables described above, it is estimated that the fee schedule adopted herein will produce the following revenues:

[8] Thus the Commission anticipates that the increase in the fee for restricted radiotelephone permits will operate to decrease the number of applications received for such permits although the extent of such cut-back is not presently ascertainable.

Broadcast Bureau	$9,600,000
Cable Television	1,145,000
Chief Engineer	355,000
Common Carrier	4,700,000
Field Engineering Bureau	2,007,300
Safety & Special Radio	7,750,300

The total revenue on a Commission-wide basis is $25,558,500, if the fee schedule were in effect for the entire fiscal year 1971.

5. Many comments alleged that the Commission's proposed fee schedule constituted a system of taxation which was beyond the authority of the Commission. It is clear to us, however, that the fee schedule adopted herein is directly tied to "work, service . . . benefit, privilege . . . franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued" by the Federal Communications Commission, and that the fees set forth in such schedules are fair and equitable and have been established after taking into consideration direct and indirect cost to the government, value to recipient, public policy or interest served and other pertinent factors. As such, the fee schedule adopted herein, like its predecessor, is clearly within the authority of the Commission under Title V of the Independent Office Appropriations Act of 1952. (See *Aeronautical Radio Inc.* v. *F.C.C.*, 335 F 2d 304; *cert. den.* 379 U.S. 966.)

6. As described in the Notice, the fee schedule adopted herein imposes fees in two additional areas which are not now subject to fees of any kind, but are the subject of Commission regulation and which directly or indirectly receive what in effect is a Commission authorization tantamount to a "license." The first area concerns Community Antenna Television systems which, as interstate communication services, are permitted to operate only in accordance with Commission rules and regulations adopted during the past five years. The Commission's authority to regulate the conduct of CATV activities under various permissive and restrictive regulations was affirmed by the U.S. Supreme Court in *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968). Its regulation of this type of interstate communication service now constitutes a substantial portion of the Commission's responsibilities, and a major staff unit has now been given permanent status to deal with this area. While the Commission's regulatory approach does not require a prior approval by the Commission in the form of a "license" before one may provide this communication service to subscribers, the rules and regulations which have been adopted affect every CATV system and, in effect, each of the more than 2,240 operating CATV systems has been given general authorization to provide this interstate communication service in accordance with applicable rules and regulations. There, therefore, appears to be no reason for distinguishing this service from other communications services which the Commission authorizes and which are now encompassed in the present fee schedule.

7. The second additional area of Commission regulation and authorization reflected in the revised fee schedule adopted herein is in the field of radio frequency equipment testing and approval. The Commission long ago established technical standards for various kinds of

radio frequency equipment which could be used under Commission authorization. While these restrictions were imposed upon the users of radio frequency equipment, the Commission permitted equipment manufacturers to avail themselves of its testing, review and approval procedures.[7] Having obtained Commission approval in advance, radio equipment manufacturers were thereby enabled to assure prospective purchasers that the equipment was in compliance with the Commission's technical standards applicable to such radio equipment. Subsequently, the enactment of Section 302[8] of the Communications Act established a prohibition against the importation, shipment or sale of radio frequency devices which did not comply with Commission regulations in this area. Rules have now been adopted, effective October 1, 1970, which would require type approval, type acceptance or certification of such devices prior to their importation, shipment, or sale.[9] Thus, in effect, the equipment approval actions of the Commission will be tantamount to an authorization which must be obtained prior to importation, shipment or sale of radio frequency devices. The Commission's activities in this area are not insubstantial and currently average some 1800 type approval, type acceptance and certifications, annually. The fee schedule, therefore, includes an appropriate schedule of fees for these various kinds of radio frequency equipment approval actions.

8. Some further observations of a general nature may be in order as to the considerations which have been taken into account by the Commission in establishing the separate license or authorization fees included in the proposed schedule. These have been established in light of the differing factors which are unique to one or another of the many communication services under the broad aegis of the Commission. For example, licenses in the broadcast services are by statute limited to a maximum of three years, while the grant of certificates of public convenience and necessity for common carrier communication services under Section 214 of the Act are without such time limitations. The latter situation also applies to equipment approval actions and our authorization, by rule, of CATV system operations. Similarly, the "value to the recipient" factor needs be considered on a different basis amongst various services by reason of their different characteristics and operations. Broadcast services are commercial enterprises which exist on an "advertiser-supported" basis, without direct charge to the listening public, while common carrier communication companies provide their services to all users at charges set forth in tariffs. On the other hand, CATV systems operate on a somewhat similar basis as common carriers, but their provision of but one kind of service to each subscriber at the same price permits a different approach in considering "value to the recipient" than is possible with communications common carriers which utilize the same facilities for the provision of different services to different customers. Again, our equipment approval actions are taken with respect to many different types of equipment, and our consideration of the "value to the recipient" factor

[7] "Type Approval" procedures involve equipment testing by the Commission's laboratory. "Type Acceptance" and "Certification" procedures involve testing by the equipment manufacturer and analysis of test measurements by Commission engineers.
[8] 47 U.S.C. § 302.
[9] Docket No. 18428, 34 F.R. 1057.

in establishing fees needs consider the small amount of processing costs involved. We have therefore selected different bases for considering "value to the recipient," both for different types of actions within each service and similar types of action among different services, which we believe are fair and equitable. We fully recognize that the factors we have used may not wholly or precisely reflect "value to the recipient." But such precision or accuracy is not required since our proposed fee schedule need only reflect some consideration of "value to the recipient," and our fees, in total, fall far short of the total value of Commission licenses, grants and authorizations computed by any standard. Revenues of our broadcast licensees in 1968 approximated 3.5 billion dollars. Revenues from our authorized common carrier communication services in 1968 came close to 16 billion dollars. In the same year, CATV system revenues approximated $220,000,000 and in 1968, total sales of communications equipment under our equipment approval actions exceeded 3 billion dollars. Obviously, these figures are the result of individual private business enterprise and effort and cannot be claimed to derive solely from the Commission's authorizations to the persons and companies receiving them. Nonetheless, they do serve to place in perspective the very limited extent to which the Commission has considered the "value to the recipient" factor in establishing the fee schedule adopted herein.

9. Other factors taken into consideration by the Commission in establishing a schedule of fees warrant mention. Simplicity of computation and ease in the administration of the fee system is reflected in the different approach being adopted in the schedule of fees for equipment approval actions. The tremendous number of applications filed in the Safety & Special Radio Services, in excess of 562,000 annually, together with the minimal percentage of denials of such applications militates against the establishment of separate application filing fees and license fees at this time because of the tremendous paper work involved. Where feasible, groupings have been made of different kinds of applications and authorizations and a common fee established for the entire grouping in order to avoid undue complexity. Finally, it may be noted that the widespread use of restricted radiotelephone permits for purposes other than use of communications equipment has led to an increase in the fee for this life-time permit which is designed to cut down on the demand for this kind of authorization.

10. *Effective Date of New Fee Schedule.* The Fee Schedule adopted herein is being made effective as of August 1, 1970. While the demands of time and workload may not permit publication in the Federal Register at least 30 days prior to August 1, 1970, the Commission believes that good cause exists for the adoption of this effective date. Actual or constructive notice will, in fact, be given to the industries and persons affected through the publication and release of numerous copies of this Report and Order by the Commission's Information Office immediately after adoption. Publication in the Federal Register should take place not later than the week of July 5–July 11, 1970 and widespread notice of the newly adopted fee schedule will undoubtedly be given by the press and numerous trade publications in the field. Since the fee schedule adopted herein sets forth annual fees in several areas,

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fees on a monthly basis for
and since there will be pro-ration of such ary that the fee schedule be
the balance of the first year, it is necess nth, and, in accordance with
made effective as of the beginning of a mo hat it cover as much of fiscal
the Congressional directives cited above, t
year 1971 as is reasonably possible. nder the effective date of

11. *The impact of effective date.* U by the Commission on and
August 1, 1970, all applications received he new fee schedule. Grants
after August 1, 1970, will be subject to t be subject to applicable fees
made on or after August 1, 1970, will not with the Commission prior to
if the application for such grant was filed w fee schedule.[19] Annual fees
July 1, 1970, the date of adoption of the ne he anniversary date of the
for broadcast stations are payable on t ear under the new fee sched-
expiration of the license, and in the first mber of full months of opera-
ule, the fee is to be pro-rated over the num the next payment date. The
tion beginning on August 1, 1970, until on or before April 1 of the
annual fee for CATV systems is payable ch the fee payment relates.
year following the calendar year to wh effect on August 1, 1970, the
Since the CATV annual fee will go into l to reflect the fact that the
amount payable in 1971 will be prorate 970.
fee applies only to the last five months of 1

12. *Collection Procedures.* Rules adopte d herein set forth procedures
for the collection of fees which are designe d to make these operations as
simple as possible. Fees that are establish ed for the filing applications
must accompany the application. In th e absence of such fee, the
application will not be considered by the C ommission. Where fees have
been established in connection with the is nance of a grant or authori-
zation by the Commission, the prescribe l fee will be payable within
45 days after the issuance of the grant or authorization. While the
Commission will not hold up the issuance of such grants or authoriza-
tions, the rules provide that they will be c onditioned upon subsequent
payment of the fee within the prescribe l time, and failure to make
such payment will result in cancellation o f the grant or authorization.
Annual fees will be payable in the broadca st services on the anniversary
date of the expiration of the license, a nd in CATV on or before
April 1 of the year following the cale ndar year to which the fee
payment relates. Failure to pay such fee s in the prescribed fashion
may call for appropriate remedial actio by the Commission under
Section 312 until the requisite fee has been paid.

13. *Special Temporary Authorizations and Waivers.* As set forth
in paragraph 15 of the Notice, some 15,000 applications for special
temporary authorization or for waiver u nder the Commission's rules
are filed with the Commission annually an d relate to all of the services
encompassed in the fee schedule adopted herein. We have determined
that it is appropriate to establish fees for the grant of STA's or
waivers which represent a marked depar ture from our rules because
of unusual circumstances and situations, or which encompass dispensa-
tion or authorization of an important character, or entailing special
efforts on the part of the Commission in processing them. The grant

[19] It is to be understood, of course, that application processing during the period between July 1 and August 1 will proceed on the normal course, and action will not be held up because of the imminence of the August 1 grant date.

of STA's or waivers which look simply to minor departures from our rules or to temporary operation of short duration will not be subject to fees. The different schedules adopted herein now prescribe fees ranging from $5 to $25 for the grant of STA's and waivers of the former type. It is not possible to definitively set forth all of the STA's and waivers which are of such an important character as to warrant the payment of the prescribed fee. This will be determined by the Commission at the time the application for STA or waiver is considered, and upon issuance of the grant, the recipient thereof will be notified of his liability for payment of fees, if any.

Broadcast Services

14. Of the comments filed by the broadcasting industry or broadcast oriented associations, two comments were in general support of the fee schedule as proposed. The other parties opposed the fee schedule, either in whole or in part. The comments in opposition raised three types of challenges: (1) the general challenge of legality to the entire fee schedule; (2) excessive allocation of fee burden to the broadcast industry; and (3) specific challenges to certain portions of the proposed fee schedule. The general legal arguments and allocation questions have been discussed above. Therefore, this portion of the Report and Order deals only with the comments directed at the broadcast fee schedule as proposed.

15. *Fees for Construction Permits.* The few comments concerning fees for construction permits dealt primarily with the proposition that fees from construction permit applications would have a deterring effect on qualified persons filing for new facilities and a very undesirable effect on existing broadcasters that need to improve their facilities. It is claimed that the result of these fees is that needed local service will be curtailed in small markets, and that needed improvement to marginal facilities will either be delayed or forestalled completely.

16. The Commission has considered the comments of the parties with respect to the foregoing contentions. Based on all the factors, i.e. activity costs in the broadcast field, value to recipient, public policy or interest served and other factors, we believe the fees are realistic in relation to the fees in the other services. On April 14, 1970, the Commission broadened the definition of "minor change" applications. Therefore, significant changes can now be made to an existing station's facilities under this new interpretation. While experience may prove a different result, we do not believe that the fees for applications for construction permit for new facilities or major changes in existing facilities will have a significant effect on a person's overall decision to apply for a new or improved facility.

17. Several parties urged that involuntary major modifications, such as the pending move of the antenna systems of the New York television stations to the World Trade Center, should not be subject to the new fee schedule. It is difficult to formulate a general rule in this type of case and, in many cases, a substantial improvement in facilities may take place. Section 1.1105(a) of the present rules re-

flects Commission consideration of this type of problem and will continue as the guide for action in specific cases.

18. For purposes of clarification in the assessment of fees for construction permits for standard broadcast stations, operating with different power day and night, the applicable fee will be for the highest power requested. For example, if the application calls for power of 250w, 1 kw-LS, the fee for a 1 kw operation would be the one assessed.

19. *Fees for Assignment and Transfers.* A large number of comments concerning this portion of the broadcast fee schedule were directed to both the substance of the fee schedule and to the necessity of adopting certain specific procedures for administration of the assignment and transfer fees. In assignment and transfer proceedings, the Notice proposed that the fee would be payable within 30 days after the Commission consented to the assignment or transfer. Several parties urged that this payment schedule could cause numerous problems because the cash for payment of fees is often not available until the transaction has been consummated. It is also pointed out that many sales are never closed due to changed circumstances, and thus the grant fee would not be required. Because of uncertainties of the date of closing and other factors, the Commission has revised the rule so that the new licensee or transferee will become liable for the grant fee only upon consummation of the assignment and must transmit such fee at the same time that the Commission is notified of the consummation.

20. Some of the parties have raised the question whether the assignor/transferor or assignee/transferee is liable to the Commission for the fee. While the financial burden may be allocated as between the parties by contract, the assignee/transferee would be liable to the Commission for payment of the requisite fee.

21. The parties have also urged that assignments and transfers *from* receivers, trustees in bankruptcy, and persons who have taken title from an insolvent or bankrupt licensee, *to* a new ultimate licensee should be exempt from the grant portion of the fee. The basis of their comment is that the grant fee will serve to reduce the ultimate distribution to the creditors of an unsuccessful licensee. The grant fee may well have an effect on the overall sales price of the broadcast stations, but the Commission believes the assignee or transferee, as well as the interim licensee and the creditor, receive substantial benefit from the Commission's action. For instance, competing applications cannot be filed against the application filed by the receiver. Also, the buyer will be one who is financially qualified to perform under the contract, thus giving certainty for the creditors. The Commission believes that the general rule should obtain.

22. With respect to the filing and processing of the assignment and transfer applications, the parties filed numerous comments relating to the computation of the consideration for the assignment or transfer. The Commission is well aware of the difficulty of computing the consideration in cases where cash or other ascertainable market value is not specified. However, there is consideration to support the assignment or transfer in all cases, and the amount of the consideration is therefore a question of fact. The three most difficult areas will be the

cases (a) in which the broadcast properties are only a portion of an entire sale such as one corporation buying a multi-media corporation, (b) cases in which there is no readily ascertainable market value for the consideration, such as the case involving transfer of stock of a closely held corporation, and (c) cases that involve consultant and non-competition agreements. In the case in which the broadcast properties are just a small part of an entire transaction, the question becomes one of allocating a portion of the consideration to them. The rule of reason will be followed in this matter. For instance, if separate corporations are or will be in existence for the broadcast properties, a reasonable allocation has to be made for tax purposes. In all likelihood, the Commission would accept such valuation. Or, the relative value of the underlying assets may be the most reasonable basis for allocation. If the amount of the consideration is not certain or readily capable of being reduced to certainty, we would encourage the parties to confer with appropriate Commission personnel for assistance in determining the amount of the consideration allocable to the broadcast portion of a transaction. The Internal Revenue Service bases many of its computations involving gain or loss on the sale of property on the "amount realized", which is a fair-market value concept. The Commission would, in the absence of unusual circumstances, accept this valuation in non-cash transactions as the amount of the consideration for basing the fee. The Commission realizes that some additional work is being placed on the parties in this regard, but fair-market value is a sufficiently definite standard on which to base fees in cases such as those involving a transfer of stock in a closely-held corporation. Insofar as amounts paid for consultant and non-competition agreements that are a part of the overall price of a sale, the Commission will follow the general principle of tax law, which permits a reasonable allocation of the total price to such agreements.

23. In the assignment and transfer field, the comments raised other specific questions. One is that fees should not be assessed in divestiture cases based on the decision in Docket No. 18110, the so-called "one-to-a market" proceeding. Here again, Section 1.1105(a) will serve as a guide to Commission action in this area. Certain parties have raised the question that an appearance will be created that one of the considerations of the Commission in favorably acting on an application will be the fee return. The Communications Act *requires* the Commission to make certain specific findings with respect to the grant of an application that cannot be abrogated except by Congress. There is no substance to the parties' contention. One other specific objection to the assignment and transfer grant fees has been raised. This is that the assignment and transfer grant fee and the annual operating fee amount to a "dual levy" on a station. The contention rests on the fact that the Notice stated that future profitability of a station is reflected in the sale price which amounts to "value to the recipient"; and, since, the annual operating fee is based on the "rate card", it also is a measure of value. However, it is clear that value to the recipient does not rest on any single factor in any case. In sales, the fact that a person's purchase application is insulated from a competitive hearing has very significant value. Future profitability, as well as other things, are factors in arriving at

the purchase price. The annual operating fee is based on a going-concern concept of value. The two charges rest on different, but not inconsistent concepts. Certain parties contend that the 2% grant fee in assignment and transfer cases is unfair because it does not appropriately reflect "cost to the government". However, the applicable statutory basis for our fee collection authority recognizes many factors, including "direct and indirect cost to the government", "value to the recipient", as well as others in setting fees. Another point raised is that the 2% fee could have a dampening effect on interested buyers of marginal stations. This may be true in some cases, but the fee is just one factor of many in a buyer's mind as he assesses a purchase of a broadcast station.

24. *Annual operating fees.* As we noted above, a substantial number of parties filed comments in this area alleging that the Commission is without authority to assess the annual operating fee. Certain specific objections were also raised. The major area of specific comment was directed at the use of the rate card as an index of value of the station's license. One of the arguments is that the rate card is just one factor to be considered in determining the value of a station's license. The thrust of a number of comments is that one station may have a low rate card, a high concentration of commercials and skimpy programming, while another may try to limit the frequency of commercials by having a higher spot rate. No doubt, various stations in a market will have different sales policies. This will result in different spot rates, but it is an objective index of value. The Commission is well aware that some disparity as to value exists. Over the long run, we believe that the spot rates will prove to be a feasible index of value. Licensees will therefore be required to file with the Commission a copy of the rate card in effect on June 1 of each year. The rate card must be filed at the time the annual operating fee is payable (i.e. anniversary license date). Any licensee claiming that the June 1 rate card is not reasonably descriptive of its yearly average may petition for filing of a more appropriate rate card.

25. A more specific objection is the one that stations rarely sell a highest one minute (radio) or 30 second (TV) spot announcement. Therefore, licensees will revise their applicable spot rates to reduce the amount of the annual operating fee. Licensees may well revise spot rates, but the amount of their respective rates will be in the public file. This will cause parties to file realistic data in relation to competitors. In the forseeable future, at the time a review of fees is made, we may find that another rate, such as the "5 times" the highest rate will be more feasible. The spot rates used in the proposed schedule will be adopted, subject, of course, to a continuing review of fees.

26. Specific comments requested clarification as to joint AM–FM rates and rates for satellite television stations. The Commission will permit the payment of a single fee for joint AM–FM rate operations based on the highest one minute joint rate. No allocation will be required at this time between AM and FM. If satellite television stations are sold as a package with the parent station, a single annual fee will cover both operations.

27. Some comments claimed that the notice was ambiguous as to

whether renewal application fees would be abolished if the annual operating fee concept were to be adopted. We wish to clarify the matter by stating that, upon the effective date of the fee schedule, renewal fees for all broadcast applications will be abolished in favor of annual operating fees.

28. While many comments objected to the size of the annual operating fee, the Commission finds that the multiple of 12 and 24 for television and radio, respectively, when applied to the spot rate, is not excessive when considering the value of the license. However, a number of the parties have urged that the Commission grant some relief from the annual operating fee in marginal and hardship cases. Primarily, the claim is that small market radio and UHF stations may be forced to curtail service and, in some instances, cease operations. The parties further point out that the annual fees are being added at the time that broadcast stations are suffering other revenue losses such as curtailment of cigarette advertising revenue and discounts for political broadcasting, as well as advertising competition from CATV. The parties note further that stations must also bear the recently increased transmission costs charged by American Telephone & Telegraph Company. The comments also pointed out that, based on the Commission's own data, 28% of all AM and FM operations, 65% of independent FM operations, 14% of the VHF television stations, and 55% of the UHF stations reported losses. The Commission is very aware that broadcasting is a competitive industry and takes notice of the significant number of unprofitable stations in the industry. We have considered the comments of the parties, especially as to the question of whether the annual operating fees will cause a diminution of program service by broadcast stations, in general, and marginal stations in particular. However, in the case of television stations, the annual operating fee will only be equivalent to the stations' charge for one spot announcement each month and for radio, two spots per month. Such fees should not constitute a significant burden in a broadcast station's total operations. The Commission will maintain a continuing review in this area and, if the facts indicate a change is necessary, it will be made. We therefore adopt this annual fee schedule for all broadcast licensees.

29. Comments were submitted which urged that the Commission reexamine the question of the desirability of charging fees for station auxiliaries. Since the renewal application fee has been abolished for the parent broadcast stations, and the auxiliaries are an integral part of the broadcast operation, the annual operating fee is reflective of the entire operation. Therefore, separate fees for renewal applications of broadcast auxiliaries are also being eliminated.

30. With respect to translators, several parties urged that all fees be abolished for television translator stations. The prime ground urged is that very few translators are profit making either in nature or practice and do bring sorely needed service to remote areas, and therefore any fee is a hardship. Since the annual operating fee is also a reflection of the feeder television station and all translators carrying it, we believe that fees for renewals of translators should similarly be eliminated. The few nominal fees for construction permits for translator stations are also being eliminated, because many translators are com-

munity owned and are not operated for profit. While a few translators may be operated for profit, the small loss of revenue, when balanced against the necessity of classifying various types of translators, enables us to reach that result.

31. We also received very specialized comments requesting exemption from fees for broadcast stations operated by organizations that are exempt from paying income taxes, even though the stations are not classified as noncommercial educational stations, but who do not accept commercial spots or any commercial sponsorship. Also some college broadcast stations, that operate on a limited commercial basis, requested an exemption from the grant portion of the fee for construction permit. The Commission does not have sufficient factual data to enable it to classify and delineate specific exemptions to stations that do not operate commercially, but who are not classified as noncommercial educational stations. Therefore, we will not "carve out" any exemptions in this class at this time, but will examine the matter in future reviews.

32. One party urged that the Commission adopt fees for the processing of data filed by the networks. The Commission believes that it would be inappropriate to adopt such a schedule at this time, but we will maintain a continuing review of the Commission's functions and duties, including those relating to the networks, and will revise, discontinue or adopt fees as the circumstances dictate.

Common Carrier Services

33. Comments in response to the Notice of Proposed Rule Making were received from a number of communications common carriers, including telephone and telegraph carriers, ComSat and organizations providing mobile radio telephone service and paging services or point-to-point microwave communications services. Most of the respondents expressed opposition to the proposed use of a percentage of construction or annual lease costs as a measure of grant fees for facility authorizations. AT&T and other representatives of the telephone industry contend that such costs do not uniformly or accurately reflect "value" to the applicant, as construction costs may vary widely for reasons unassociated with the revenue-producing capacity of the plant being constructed. Added costs of underground or hardened facilities for national security or for protection against natural disasters, and the provision of facilities to very remote locations in the public interest are cited as factors in support of this position. AT&T in its filing also avers that reconciliation of estimated and final costs, as required by the initial proposal, would be difficult and time consuming and would impose substantial additional bookkeeping and accounting burdens on the industry and Commission alike.

34. A number of the miscellaneous common carriers (microwave) and those in the domestic public land mobile radio service also objected to the concept of grant fees based on construction costs, although generally on different grounds. Most of these carriers feel that the construction cost concept would place a much heavier relative financial burden on them than on the conventional telephone and telegraph

carriers, and also discriminates in favor of private radio systems for which no grant fees are proposed. AT&T suggests an alternative plan of relating grant fees to maximum authorized bandwidth for common carrier radio authorizations and to interstate voice channel miles authorized by the grant of applications filed under section 214 of the Act for certificates of public convenience and necessity, and other applications which do not lend themselves to these yardsticks to be charged flat fees. The United Telephone System also recommends that the grant fees be based on a similar concept, suggesting route miles as an appropriate measure.

35. We do not favor authorized bandwidth as a measure of fees for radio services because of inequities which would result from the diverse bandwidth requirements and technical standards of radio services operating in different parts of the spectrum. We do, however, agree that channel miles authorized better signifies "value to the recipient" for authorizations to construct and operate communication channels on wire, cable, microwave, or satellite facilities than does construction cost. Moreover, this approach will simplify determination of correct fees at the time of grant and will eliminate the accounting burden of isolating and reconciling final construction costs with the estimated costs contained in the application. Consequently, the fee schedule has been restructured to delete the proposed use of a percentage of cost as the basis of grant fees for construction applications, with the substitution of communication channel miles as a measure of grant fees for Section 214 facility applications,[11] and the use of flat license fees for services not conducive to the channel mile treatment, as set forth in the attached schedule.

36. Specifically, the new schedule calls for flat grant fees for construction or modification of base stations in the Domestic Public Land Mobile Radio Service, in lieu of a percentage of construction cost, and also for central office stations in the Rural Radio Service and for point-to-point microwave construction authorizations. In the Satellite Communications Service flat fees are proposed for earth station construction permits and for grants to construct and launch satellites. For common carrier nonradio applications involving construction of cable routes (both landline and overseas) or the establishment of communication channels on existing wire, cable, radio or satellite facilities or the lease of such channels from another carrier, the grant fee is based on the mileage and number of channels authorized, with specific charges per unit for the various categories as specified in the schedule.

37. The flat fees proposed for the public land mobile radio service should serve both to relieve the alleged excessive financial burden on these carriers and reduce the disparity between these common carrier services and private mobile radio systems. A threefold increase in fees for these authorizations is minimal in relation to the 25-fold increase

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[11] The number of each type of communication channel to be provided and route mileage is now required in Section 214 applications or by § 21.706 of the Rules for those carriers who elect to include a description of the proposed facilities as part of their microwave radio applications, in lieu of filing a separate 214 application. For ease of administration of the fee plan, we would propose to require all carriers to file separate Section 214 applications for authority to channelize microwave routes.

required of common carrier services in total. Likewise, the flat fees now suggested for microwave construction permits will lessen the initial disparity between common carrier and private microwave systems, coupled with the upward adjustment in the filing fee for private systems, as discussed in the Safety and Special Radio Services section of the Report and Order. We do not consider a fee of $200 for common carrier microwave construction permits to be excessive, in light of Commission processing costs and value of the authorization to the applicant, although recognizing that the channel mileage fee will also be applied to those routes, if and when channelized to provide interstate communication services other than video.

Safety and Special Radio Services

38. In the hundreds of comments filed discussing the fees proposed for the Safety and Special Radio Services, the most common objection was that the fees do not reflect the Commission's actual costs of processing these applications. However, as stated in the Notice in this proceeding, the fees we have proposed are designed to cover the entire range of regulatory costs of the Commission and not simply application processing costs in particular services. They also take into consideration value and personal benefit to the recipients of licenses. The fees adopted herein meet these criteria. Thus, while the comments are accurate in suggesting that the fees exceed application processing expenses, there is no merit to any contention that they are excessive, unrelated to the costs of these services, or beyond the scope of our authority.

39. Another contention made by many was that the general public is, in fact, the principal beneficiary of the activities of licensees in the Safety and Special Radio Services and, therefore, the general tax revenues should be used to support at least a part of the Commission's expenses. A variation of this argument presented by some was that it is unfair to raise the fees for most Safety and Special licensees while continuing the fee exemptions for some categories of licensees in these services. In particular, it was urged that the public, through the general tax revenues and not the other Safety and Special licensees, should bear the expenses related to regulating these categories of nonfee-paying licensees. Under the current fee schedule which has been in effect for several years, several categories of licensees have been exempt from fees and propose to continue these exemptions. To a large extent, they cover stations connected with public safety activities, state and local government services, disaster, emergency, and rescue activities, some educational work, regulatory work connected with the compulsory safety at sea program, and beginning Amateur radio operators. We consider these exemptions appropriate and in the public interest at this time and we note that objections were not directed to the specific exemptions themselves. The objection made reflects the mistaken notion that some licensees will be paying for the regulatory costs of other classes of stations. Our total fee schedule has been adjusted to cover all Commission costs, taking into account the regulatory expenses connected with particular services and also the value of the radio authorization to the

licensees. In every instance of the new fees adopted herein for the Safety and Special Radio Services, there is no case where the fee is excessive, unreasonable, or unwarranted when value to the recipient is taken into account along with regulatory costs. Under these circumstances, there is no merit to the contention that some licensees are bearing the expenses of others.

40. Another objection was that the revenues raised through the collection of these proposed fees would exceed the "Bureau's share of the Commission's budget." A short answer to this contention, as more fully set forth in paragraph 4 above, is that there is no requirement in the statute that the "Bureau's share" of fee revenues shall not exceed its share of the Commission's budget or the cost of the Commission's activities involved therein. As set forth above, the Commission's breakdown of activity costs was an important, but not an exclusive, factor in establishing the fee charges adopted herein. However, there is no merit either in fact or in principle to the contention that Safety & Special Service licensees will be subsidizing other services. It has been clear for some years that a major portion of the Commission's fee revenues since the adoption of the fee schedule in 1963, have derived from the Safety & Special Radio Services. But since this apparent disproportion was not based upon discriminatory factors, the validity of the existing schedule has passed the test of judicial review, as cited above. In the same vein, the fee schedule adopted herein is no less valid because the estimated fee revenues from the Safety and Special Radio Services fall some $93,205 short of the $7,843,500 of Commission costs allocated to such activities.

41. Some concern was expressed that the Safety and Special Radio Services fees will increase in the future if the Commission is to recover its budgetary costs through the assessment of fees. It is reasoned that so long as governmental expenditures rise, the Commission will have to resort to higher fees to remain substantially self-sustaining. In this context, concern was expressed that present and future spectrum management costs would be included in the Safety and Special Radio Services activity costs. In fact, the Safety and Special activity expenses now include its share of spectrum management costs and will continue to do so in the future. If the regional spectrum management project now under development and experimentation is continued and expanded, it may be expected that the costs of this program will be borne by the beneficiaries thereof. In any case, the Commission is obligated to keep the matter of fee schedules under continuing review, and if expenses of regulating these services rise, it may be expected that fee schedules must be adjusted upward.

42. The opinion was expressed by some that the fee to renew a station license should be considerably less than the $19 fee which was set forth in the Notice of Proposed Rule Making as a basic fee for most of the Safety & Special Radio Services. Contrariwise, broadcasting interests noted that the ranks of the land mobile licensees include some of the largest and most profitable corporations; that land mobile users report substantial savings as a direct result of the use of land mobile radio; and that, under these circumstances, land mobile licensees should be required to pay more than the $19 fee. As previously set

forth, the standard fee we proposed to establish in the Safety and Special Radio Services reflected the tremendous number of applications received in these services. Further, the benefits and value of a radio license to a Safety and Special Radio Service licensee is not readily comparable to the benefit and value of a radio license to a communications common carrier or to a broadcaster, and the same criteria are not applicable. For most Safety and Special Radio Services licensees, the authorized use of radio facilities is an adjunct to the licensee's principal business or for safety purposes, and the regulatory programs connected with these services are different from those associated with the regulation of the broadcast and common carrier services. However, in order to more equitably distribute respective shares of estimated fee revenues amongst the various services, the fee schedule adopted herein provides for an increase in the basic fee for most Safety and Special Radio Services to $20, as against the $19 previously set forth in the Notice of Proposed Rule Making. As indicated above, this further change will still leave Safety and Special Radio Service's share of fee revenues below the amount of allocated activity costs set forth in paragraph 4 above.

43. Since the proposed fee schedules for the Safety and Special Radio Services were first published in the Notice of Proposed Rule Making, certain changes to Section 1.1115 have been made in response to the comments we have received and as the result of our own further reflection:

(a) The fees we will require of Operational Fixed stations using frequencies above 952 MHz have been raised from $35 to $75. We have reconsidered our original proposal, and feel this increase is warranted in view of the administrative effort devoted to the licensing and regulation of this category of station.

(b) Many amateur radio licensees stated that the basic fee proposed for the Amateur Radio Service ($9) was too high, especially when compared to the fees that must accompany applications for commercial operator's licenses. We believe, however, that this difference can be justified by the difference in the services involved (i.e., the commercial operators' license is necessary to employment as a commercial operator, while the amateur is essentially a hobbyist, although oftimes performing an important service). We also considered the suggestion that in the Amateur Radio Service there should be an examination fee and a license fee, rather than a single fee for all Amateur applications. We deny this suggestion because of the impracticability of administration.

(c) Another exception to those requests which do not require a fee has been added. A licensee will be permitted to file a request to correct clerical, typographical, and other similar errors made in an application for license, without submitting an accompanying fee, if the request is filed within 60 days of the grant.

(d) A new subparagraph has been added to permit a refund whenever a formal application not required by our Rules is filed by a current licensee in the Safety and Special Radio Services. A typcial situation covered by this new provision would be where a corporation files a formal application to change its name without any concurrent change in its corporate structure or ownership, instead of simply noti-

fying the Commission of this change by letter, as permitted by our Rules.

(e) At the present time, our rule covering the Safety and Special Radio Services reads in terms of "formal applications" and except for requests for duplicate licenses, STA's, and waivers, there was no intention to extend the applicability of fees to other than formal applications. Although the word "formal" was left out of our proposal by inadvertence, we are using it again in the rule herein adopted. Otherwise, the rule might be construed to have broader application than intended.

CATV

44. Elsewhere in this Report and Order, we have dealt with such underlying questions as: (i) whether the Commission is legally authorized to establish a fee schedule which will provide the General Treasury with revenues sufficient to substantially offset the Commission's budgeted expenditures; (ii) whether, in particular, the CATV schedule is unfair as a whole either because (as some CATV parties allege) CATV regulation is primarily for the benefit of the television broadcast industry, and the latter industry should bear the costs, or because (as some broadcast parties allege) the schedule fails to anticipate a rapid proliferation of CATV throughout the country accompanied by accelerating regulatory costs; and (iii) whether CATV operation may be viewed as a Federally licensed activity with respect to which the Commission may charge an annual fee.

45. Having already treated these and other broad questions of regulatory-agency-fee law and policy, we may now approach the particulars of the CATV fee schedule, and test each of the items therein with the simple question, "Is it fair?" We have modified somewhat the originally proposed CATV fee-schedule revision (as set forth in the Notice of Proposed Rule Making in this proceeding) in the light of that question and the comments which have been filed.

46. In view of the administrative burden entailed by petitions for special relief filed under Section 74.1109 of the Rules, we originally proposed a filing fee of $300 per petitioner. That fee has now been reduced to $25 per petition—in recognition of the fact that such petitions often draw the Commission's attention to situations in which the public interest would be disserved by routine application of the rules, and that parties considering the filing of such a petition should not be confronted with fees so high as to discourage them from doing so. The CARS $15 license application fee item has been corrected to make it clear that, as intended from the outset, the fee is for both new-license and license-renewal applications; the absence of a CARS license-renewal fee would be unjustifiably inconsistent with the schedule's provisions with respect to other licensed services. For the same reason, we have removed the annual-fee exemption originally proposed for CATV systems with 200 or fewer subscribers.

47. The 30-cents-per-subscriber-annual-fee formula has been attacked on diverse grounds: that it fails to take into consideration that different systems charge different subscription rates; that operating costs vary even when subscription rates are the same; that in some

cases local franchise agreements bar systems from passing increased costs on to subscribers via rate increases; and that the 30-cents-per-subscriber fee would cut sharply into narrow profit margins.

48. The very diversity of these criticisms (which were not accompanied by specific supporting data) suggests that it would be exceedingly difficult to devise a formula that would be proof against all attack. In defense of the formula adopted, we would note: (i) that generally available information about the CATV industry indicates that subscription rates tend to cluster at about $5 per month or a bit higher; (ii) that 30 cents per subscriber per year thus appears to constitute in the typical case only one-half of 1 percent of CATV system gross revenues from subscription fees, if that much; (iii) that, particularly in view of the smallness of the fee, alternative formulas involving more complicated calculation to verify adequacy of the fee payment might be more precise but, under the circumstances, are unnecessary; (iv) that the Commission lacks reliable information about the operations and internal finances of CATV systems, but is currently readying new rules and procedures which will enable it to obtain such information, via annual reporting by CATV systems; and, finally, (v) that as the Commission obtains such information it will use it for periodic review of the equity of its CATV fee schedule.

49. The annual fee is payable on April 1 of each year for the preceding calendar year or part thereof.[42] It is computed on the basis of thirty cents times the number of subscribers during the calendar year. The number of subscribers is determined by averaging the number of subscribers on the last day of each quarter of the calendar year. The fee for periods less than a calendar year is the annual fee pro-rated by the number of full months covered.

Equipment Testing and Approval

50. Many comments indicated that there was no objection to the establishment of a fee schedule for equipment approval actions which was fair and equitable and recovered an amount approximating necessary expenses of the Office of Chief Engineer. However, there was strong opposition to the concept of a grant fee the computation of which was based on the manufacturer's selling price and the number of units of the particular type of equipment produced. It was stated that the "manufacturer's selling price" was not a term of art uniformly defined by all manufacturers and that the use of production figures could involve the disclosure of information which has always been regarded by the industry as confidential. In addition, it was alleged that a projection of fee revenues made by industry members under the formulas originally proposed would produce a return far in excess of the allocated cost of equipment approval activities as set forth in our Supplemental Notice and, indeed, much beyond the Commission's announced goal.

51. Our re-examination of this subject has led us to markedly revise the schedule of fees for equipment approval actions. In lieu of the formula previously set forth, the fee schedule adopted herein provides for

[42] The date of filing of the annual financial report, if required (See Docket 18397) will be coordinated with the fee payment date.

a flat filing fee ranging from $5 to $200, as well as a flat grant fee ranging from $15 to $800 for each model or type of equipment covered by the Commission's equipment approval action. As set forth in our rules, application filing fees must accompany each application for equipment approval action.[23] Our past experiences in equipment approval activities indicate some 1800 separate approval actions, many of which cover several models or types of the basic equipment. This is a new area for the Commission's fee schedule and we do not yet have the experience or the information which permits the adoption of a more refined schedule of fees, which would more accurately and precisely reflect the "value to recipient" factor, a fundamental aspect of the Commission's new fee schedule. We believe, however, that the simplified schedule adopted herein, which reflects primarily the cost to the government, is generally fair and equitable and emphasizes the factor of simplicity from the standpoint of the industry affected.

52. Some comments, notably from aviation interests and others manufacturing equipment for government, military or foreign entities, or for emergency services, urged exemption from the fee schedule of those categories of equipment. Additionally, a number of comments suggested that consideration be given for those equipments used in serving the general public, e.g., navigation aids, etc. These comments mistake, however, the thrust of the Commission's fee schedule in this area. Fees are being established in connection with the Commission's equipment approval action without regard to the type of equipment involved. If the particular equipment is required by any other rule or statute to be approved in connection with its shipment, sale or use, then a fee is properly chargeable for the work and benefit involved in such action. The important factor is the necessity or desirability of equipment approval action and not in the ultimate purpose or destination of such equipment.

53. One other comment indicated that since certain industrial heating equipment might not include conventional receivers or transmitters, it should not be subject to fees. This contention, too, is beside the point. Fees have been established to cover the work and benefit involved in equipment approval actions regardless of the type of equipment in question. If equipment approval action is requested and obtained, the fees set forth in the schedule adopted will be payable.

Commercial Radio Operator Licenses and Examinations

54. The present fee schedule relating to commercial radio operators encompasses one fee to cover both the application to take radio operator examinations and the subsequent issuance of a license. The schedule adopted herein makes no change in this approach. While new fees are established for applications for verification cards and posting statements, no increase is made in existing fees except for the issuance of restricted radio telephone permits. This increase is based in part on the fact that commercial radio operator licenses are normally issued

[23] Our proposed revision in procedures, announced in connection with our rules adopted under Section 302 of the Act, look to a clearly defined two-step procedure of application filing and subsequent action on such applications, but is not yet completed. The application filing fee for equipment certification should accompany the certificate filed by the manufacturer and the grant fees will be payable upon Commission acknowledgment and approval.

for a period of five years, while restricted radio telephone permits are valid for the lifetime of the holder. However, the proposed increase to $10.00 set forth in the Notice has been reduced to $8.00. While the tremendous number of applications for such permits in the past would, if maintained, produce fee revenues markedly in excess of Commission costs allocated to operator licensing activities, it is anticipated that the fee increase will operate to decrease the number of such applications. That, too, is a Commission objective since it appears that such permits have been obtained and used by holders for other than communications purposes.

55. Comments directed to the increase in fees for the restricted radio operator permit claimed that such increase was unreasonable, prohibitive, discriminatory or would affect "the safety offered by the shipboard radio installations." It is unlikely, however, that safety of shipboard radio installations could be affected by increasing the fee since the increase should not deter applicants for a lifetime permit who require it to operate shipboard radios.

56. One comment suggested that renewals of First and Second Class licenses be nullified in order to reduce workload. Upon examination of this proposal, the Commission has determined it is necessary to provide for renewal of such licenses in order to maintain administrative control, particularly in cases where behavior by the operator warrants consideration by the Commission as to whether the license should be renewed.

57. Authority for the adoption of the amendments herein is contained in Section 4(i) (47 U.S.C. § 154(i)) of the Communications Act, Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. § 483(a)), and Budget Bureau Circular A-25 and supplements thereto.

58. This proceeding is hereby terminated.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

APPENDIX

Subpart G, Part 1 of Chapter I, Title 47 of the Code of Federal Regulations is revised to read as follows:

SUBPART G—SCHEDULE OF FEES FILED WITH THE COMMISSION

Authority: §§ 1.1101–1.1120 issued under sec. 501, 65 Stat. 290; 31 U.S.C. 483a unless otherwise noted.

General Information

§ 1.1101 Authority.

Authority for this Subpart is contained in Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) which provides that any service rendered by a Federal agency to or for any person shall be performed on a self-sustaining basis to the fullest extent possible. Title V further provides that the head of each Federal agency is authorized by regulation to prescribe such fees as he shall determine to be fair and equitable.

§ 1.1102 Payment of fees.

(a) *Filing fees.* Each application or notification by a CATV system under § 74.1105 filed on or after August 1, 1970, for which a fee is prescribed in this subpart, must be accompanied by a remittance in the full amount of the fee. In no case will an application or other filing be accepted for filing or processed prior to payment of the full amount specified. Filings for which no remittance is received, or for which an insufficient amount is received, may be returned to

the applicant. In the case of multiple applications for which a single check is drawn to cover all fees for the applications, it would be of great assistance to the Commission if a transmittal letter or notice were attached stating what fees are covered by the check.

(b) *Grant fees.* Grant fees should be accompanied by a transmittal advice identifying the purpose of the check. A copy of the Commission's notice of grant, which will specify the amount of the fee, will suffice.

(1) Where a grant fee is prescribed in the various services, the fee will be payable within 45 days after grant by the Commission. In the broadcast services, the grant fee, based on a percentage of the consideration, in assignment and transfer cases must be *transmitted* by the new licensee immediately following consummation of the transfer or assignment.

(c) *Annual fees.* The annual fee prescribed for broadcast stations must be submitted each year on or before the anniversary date of the expiration date of the station's license. The licensee shall file the station's rate card as of the preceding June 1 together with the amount of the annual fee. A new station first becomes liable for the annual operating fee at the time program test authority is granted. In the first year, the fee will cover the period from the date of program test authority until the next payment date (Example, if a station is in operation for seven full months prior to the next payment date, the fee is 7/12 of the annual rate).

(1) If a station has filed an application for renewal of a station license that will expire after July 31, 1970, any filing fee paid with the renewal application will be credited against the initial annual operating fee. Licensees should note that they are claiming this credit at the time they submit their rate card and pay their first annual operating fee.

(2) The annual fee prescribed for CATV systems must be submitted by April 1 for the preceding calendar year. A new CATV system becomes liable for the annual operating fee as of the date it begins to charge for service to 50 subscribers or more. In the first year of operation of the system, the fee will be computed based on the average of the number of subscribers being served on the last day of each full quarter of operation up to the end of the calendar year (Example, if a system is in operation on the last day of three quarters prior to the end of the calendar year, the average of those three last-day figures is to be used in computing the fee required). The fee will cover the number of full months of operation until the end of the calendar year, (Example, if a system is in operation for seven full months prior to the end of the calendar year, the fee is 7/12 of the annual rate).

(d) Fee payments received in the Commission's Offices in Washington, D.C., or in any of the Commission's field offices, should be in the form of a check or money order payable to the Federal Communications Commission. The Commission will not be responsible for cash sent through the mails. All fees collected will be paid into the United States Treasury as miscellaneous receipts in accordance with the provisions of Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

(e) Receipts will be furnished upon request in the case of payments made in person, but no receipts will be issued for payments sent through the mails.

(f) Except as provided in §§ 1.1108 and 1.1104, all fees will be charged irrespective of the Commission's disposition of the application. Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted.

§ 1.1108 Return or refund of fees.

(a) The full amount of any fee submitted will be returned or refunded, as appropriate, in the following instances:

(1) Where no fee is required for the application filed.

(2) Where the application is filed by an applicant who cannot fulfill a prescribed age requirement.

(3) Where the application is filed for renewal without the reexamination of an amateur or commercial radio operator license after the grace period has expired.

(4) Where the applicant is precluded from obtaining a license by the provisions of section 303(1) or 310(a) of the Communications Act.

(5) Where circumstances beyond the control of the applicant, arising after the application is filed, would render a grant useless.

(6) When applications (accompanied by fees) are filed where not actually required by Safety and Special Radio Service rules (e.g., change of address, pro forma change of corporate name, etc.).

(7) When construction permit holders and licensees make non-substantive corrections in license grants within a period of 60 days from grant.

(b) Payments in excess of an applicable fee will be refunded only if the overpayment exceeds $2.00.

§ 1.1104 General exceptions.

(a) No fee is required for an application filed for the sole purpose of amending an authorization or pending application (if a fee is otherwise required) so as to comply with new or additional requirements of the Commission's rules or the rules of another Federal government agency affecting the authorization or pending application; however, if the applicant also requests an additional modification or the renewal of his authorization, the appropriate modification or renewal fee must accompany the application. Fee exemptions arising out of this general exception will be announced to the public in the orders amending the rules or in other appropriate Commission notices.

(b) No fee is required for an application filed by an alien pursuant to a reciprocal radio licensing agreement.

§ 1.1105 General Rule.

No filing fee is required for any application or request for special temporary authority (STA) or waiver in any service or for the grant of a STA or waiver of brief duration or minor character. Upon grant of an application or request for STA of an important character, the applicant will be notified to remit a fee in the following amount for the respective services.

Broadcast Services	$25.00
Common Carrier Services	25.00
Safety and Special Radio	5.00
Community Antenna TV	25.00

§ 1.1111 Schedule of fees for Radio Broadcast Services.

(a) Except as provided in paragraph (b) of this section, the fees prescribed below are applicable to applications and operations in the Radio Broadcast Services:

Construction Permits

Application for construction permit for new station or for major changes in existing station:

	Filing fee	Grant fee
VHF—top 50 markets [1]	$5,000	$15,000
UHF—top 50 markets	2,500	22,500
VHF—next 50 markets	2,000	15,000
UHF—next 50 markets	1,000	9,000
VHF—balance	1,000	9,000
UHF—balance	500	4,500
FM—class A	300	900
FM—class B and C	700	1,800
AM—day-50 kw	800	4,200
AM—day-25 kw	600	3,000
AM—day-10 kw	500	2,700
AM—day-5 kw	300	1,800
AM—day-1 kw	150	900
AM—day-500 w	50	450
AM—day-250 w [2]	25	225
AM—unlimited 50 kw	1,000	9,000
AM—unlimited 25 kw	800	7,200
AM—unlimited 10 kw	600	5,400
AM—unlimited 5 kw	450	2,700
AM—unlimited 1 kw	200	1,800
AM—unlimited 500 w	100	900
AM—unlimited 250 w [2]	50	450
AM—class IV	300	900
For directional antenna in addition to the above	50	450

[1] The market size shall be determined by the rating of the American Research Bureau, on the basis of the net weekly circulation for the most recent year.

[2] The fee for major changes in 100-w. operations is the same as for 250-w. operations.

Fees Schedule

Other Applications

The following fees shall accompany each application:

	AM	FM	TV	Auxiliary[1]
Applications filed on FCC Form 318 (where more than one broadcast station license is involved, the application must be accompanied by the total amount of the fees prescribed for each license so involved).	$220	$220	$220	No fee.
Application for construction permit to replace expired permit, FCC Form 321.[2]	$90	$90	$90	$30.
Application for modification other than a major change	30	30	30	
Application for change of call sign for broadcast station	100	100	100	
All other applications in the broadcast services	30	30	30	

[1] With respect to applications for remote pickup broadcast stations authorized under subpart D of part 74 of this chapter, one fee will cover the base station (if any) and all the remote pickup mobile stations of a main station, provided the applications therefor are filed at the same time.

[2] The $300 fee applies to construction permits for new stations or major changes in existing stations. An application to replace a construction permit for a modification other than a major change must be accompanied by a fee of $90 in all services.

Subscription Television

Application for Subscription Television Authorizations:

Application Filing Fee **$1,000**

Assignments and Transfers

Application for assignment of license or transfer of control, exclusive of FCC Form 316 applications (where more than one broadcast station license is involved, the total amount of fees prescribed for each license so involved will be paid in the manner set forth below):

Application Filing Fee ..... **$1,000.**

Assignment and Transfer fee to be paid immediately following consummation of the assignment or transfer. **2% of consideration for assignment or transfer.**

Annual License Fees

Each broadcast station shall pay an annual license fee to the Commission that is based on the station's rate card as of June 1 of each year.[3]

For AM and FM radio stations:

The annual fee will be a payment equal to 24 times the station's highest single "one-minute" spot announcement rate, but in no event shall the annual payment for each AM and each FM station be less than $52.00;

For television broadcast stations:

The annual fee will be a payment equal to 12 times the station's highest "30-second" spot announcement rate, but in no event shall the annual payment be less than $144.00.

(b) Fees are not required in the following instances:

(1) Applications filed by tax exempt organizations for the operation of stations providing noncommercial educational broadcast services, whether or not such stations operate on frequencies allocated for noncommercial educational use.

(2) Applications in the AM service requesting only authority to determine antenna power by direct measurement.

(3) All television translator applications.

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[3] In the first year of this fee schedule, a station's fee will be computed by taking the number of months from the effective date to the payment date divided by 12 times the full year annual fee. Stations beginning operation, pursuant to program test authority, after the license expiration anniversary date are liable for a pro-rata amount of the annual fee equal to the number of full months in operation from the date of program test authority to the payment date for the short period.

§ 1.1113 Schedule of fees for Common Carrier Services.

Applications filed for Common Carrier Services shall be accompanied by the fees prescribed below:

	Filing fee	Grant fee
DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE [1]		
Application for initial construction permit or for relocation of a base station, including authority for mobile units, blanket dispatch station authority,[2] and standby transmitters without independent radiating systems. [3] [4]	$100	$155.
Application for initial construction permit or for relocation of a dispatch station,[5] control station or repeater station. [4]	80	$75.
Application for modification of construction permit or license for base station, dispatch station, control station or repeater station at an existing station location.	25	$30.
Application for renewal of license for base station	25	$125.
Application for renewal of license for dispatch station, control station or repeater station.	10	$50.
Application for license, modification of license, or renewal of license for individual mobile stations per mobile unit.	80	None.
RURAL RADIO SERVICE		
Application for an initial construction permit or for relocation of facilities—central office.[4]	100	$100.
Application for modification of construction permit or license—central office.	25	$30.
Application for license for operation of a rural subscriber station at temporary-fixed locations.	10	$20.
Application for license or modification of license for individual subscriber stations.	5	$20.
Application for renewal of license rural subscriber station	25	None.
Application for renewal of license central office station	125	Do.
POINT TO POINT MICROWAVE RADIO SERVICES		
Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to existing points of communication or for relocation of facilities.[4] [6]	80	$180.
Application for license for operation of a station at temporary-fixed locations.	30	$100.
Application for modification of construction permit or license	30	$130.
Application for renewal of license	25	$100.
LOCAL TELEVISION TRANSMISSION SERVICE		
Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to an existing station location or for relocation of facilities.[4]	30	$130.
Application for license for operation of an STL station at temporary-fixed locations.	30	$100.
Application for license for operation of a mobile television pickup station	30	$100.
Application for modification of license	25	$75.
Application for renewal of license	25	$30.
INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES		
International fixed public station:		
Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station. [4]	150	$300.
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter(s) being replaced if both applications are filed simultaneously).	75	$100.
Application for change of location of an authorized station	150	$400.
Application for modification of license	25	$100.
Application for renewal of license	100	$600.
International control station:		
Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station.[4]	100	$400.
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter being replaced if both applications are filed simultaneously).	50	$250.
Application for change of location of an authorized station	100	$400.
Application for modification of license	25	$100.
Application for renewal of license	50	$100.
OTHER RADIO APPLICATIONS		
Application for assignment of an authorization or transfer of control (a separate fee is required for each call sign covered by the application).	10	$30.
All other common carrier radio applications	25	None.

See footnotes at end of table.

	Filing fee	Grant fee
SATELLITE COMMUNICATIONS SERVICES		
Application for initial construction permit for earth station	$50	$25,000.
Application for modification of construction permit for earth station	25	25.00.
Application for renewal of license—earth station	25	25.00.
Application for authority to construct and launch satellites	100	$100,000.
Application for assignment of an earth station construction permit or license or transfer of control of a licensee or permittee.	10	$50.
Application for communications common carrier for authorization to own stock in the Communications Satellite Corp.	25	$50.
Any other application filed under the Communications Satellite Act	25	$50.
COMMON CARRIER DOMESTIC APPLICATIONS		
Section 214 applications for construction of landline coaxial cable	100	$5 per route mile.
Section 214 applications to extend or supplement facilities by construction of radio facility or installation of carrier equipment on landline wire, cable or radio routes.	50	$6 per 1,000 equivalent 4 KHz channel miles authorized or fraction thereof.
Section 214 applications to lease facilities from other carriers (except overseas).	25	$4 per 1,000 equivalent 4 KHz channel miles authorized or fraction thereof.
Section 214 applications for overseas cable construction	1,000	$60 per route mile (nautical).
Section 214 applications to establish communication channels on overseas cables.	50	$10 per 1,000 equivalent 3 KHz channel miles authorized or fraction thereof.
Section 214 applications to lease overseas cable channels	50	$6 per 1,000 equivalent 3 KHz channel miles authorized or fraction thereof.
Section 214 applications to establish and operate satellite channels	100	$20 per equivalent 4 KHz channel.
Section 214 applications to lease satellite channels	50	$10 per equivalent 4 KHz channel.
Section 214 applications to discontinue, reduce or impair service to the public:		
Telephone companies	50	$50.
Telegraph companies	10	$10.
Cable landing license	100	$100.
Interlocking directorate applications	10	$40.
Section 221 applications	10	$200.
Tariff applications to change charges or regulations on less than statutory notice.	25	None.
All other common carrier domestic applications	25	Do.

[1] In this service each transmitter at a fixed location is a separate station notwithstanding the inclusion of more than one such station on a single authorization or under a single call sign.

[2] When included as part of a base station application, a request for blanket dispatch station authority made pursuant to the provisions of sec. 21.819(a) of this chapter does not require an individual application or fee. A request for such dispatch station authority filed separately from a base station construction permit application requires an application for modification of license and an appropriate fee.

[3] An application for a standby transmitter having its own independent radiating system requires the same fee as a base station application.

[4] No additional fee will be charged for applications for licenses to cover a construction permit unless there is a modification or variation of outstanding authority involved. In that event the appropriate fee for modification is applicable.

[5] This fee applies to any request for dispatch station authority not made pursuant to sec. 21.819(a) of this chapter.

[6] For applicants who propose to multiplex their radio systems and who make the supplementary showing required by sec. 21.706 of the rules in the lead application in lieu of filing a separate application under sec. 214 of the act, an additional grant fee will be payable at the rate of $6 per 1,000 equivalent 4 KHz channel miles, as prescribed in the schedule for sec. 214 applications to extend or supplement facilities.

§ 1.1115 Schedule of fees for the Safety and Special Radio Services.

(a) Except as provided in paragraph (c) of this section, the fees set forth in the schedule below shall accompany all formal applications for authorizations filed in the Safety and Special Radio Services:

Applications for all authorizations except as noted below	$20
Interim ship license including subsequent initial license	25
Operational fixed stations using frequencies above 932 MHz:	
Initial license and renewal	75
Assignment of license	75
Common Carrier Public Coast Stations:	
Initial license and renewal	75
Assignment of license	75
Amateur Service:	
Initial license, renewal and new class of operator license	9
Modification of license without renewal	4
Modification of license with renewal	9
Special Call Sign (plus other applicable fee)	25

(b) Except is provided in paragraph (c) of this section, the fees set forth below shall accompany the following applications or requests filed in the Safety and Special Radio Services:

Duplicate license	6

(c) *Fees are not required in the following instances:*

(1) Applications filed in the Police, Fire, Forestry-Conservation, Highway Maintenance, Local Government, and State Guard Radio Services.

(2) Applications filed by governmental entities in any of the Safety and Special Radio Services.

(3) Applications filed by the following in the Special Emergency Radio Service: Hospitals, Disaster Relief Organizations, Beach Patrols, School Buses, and nonprofit Ambulance Operators and Rescue Organizations.

(4) Applications filed in the Disaster Communications Service.

(5) Applications for ship inspections pursuant to the Great Lakes Agreement, the Safety of Life at Sea Convention, and Parts II and III, Title III, of the Communications Act of 1934, as amended.

(6) Applications for Novice Class license in the Amateur Radio Service, applications for amateur stations under military auspices, and applications filed in the Radio Amateur Civil Emergency Services (RACES).

(7) Operational Fixed Microwave Applications filed for Closed Circuit Educational Television Service.

(8) Applications for Civil Air Patrol Stations, Aeronautical Radionavigation Stations and for Aeronautical Search and Rescue Stations.

§ 1.1116 Schedule of fees for Cable Television Services.

(a) Applications, notifications and petitions filed in the Cable Television Services shall be accompanied by the fees prescribed below:

Applications in the Community Antenna Relay Service (CARS)

For a construction permit	$50
For a license or renewal	15
For a modification of construction permit or license	15

Petitions

For special relief (other than that specified below), pursuant to § 74.1109	25
For experimental operations pursuant to paragraph 51 of the December 1968 *Notice of Proposed Rule Making and Notice of Inquiry* in Docket 18397 (see, also, proposed § 74.1107(b) and (c) in Appendix C of that *Notice*)	25
For waiver of hearing re carriage of distant signals within the Grade A contour of a television broadcast station in a top-100 market:	
Per proposed commercial (a) VHF station or (b) network-affiliated UHF station, distant signal	25
Per proposed (a) educational station, or (b) independent UHF station, distant signal	10
Notifications pursuant to § 74.1105	10

(b) An annual fee shall be paid by each CATV system on or before April 1 of each year for the preceding calendar year. The fee for each system shall be equal to the number of its subscribers times 30¢. The number of subscribers shall be determined by averaging the number of subscribers on the last day of each calendar quarter. (See § 1.1102(c)(2).)

Note: Where a system offers bulk rates to multiple-outlet subscribers, such as apartment house or motel operators, such contracts are not viewed as individual subscriptions for purposes of fee determination. Rather, each such contract is viewed as a number of subscriptions, such number to be calculated by dividing the total annual-charge for that bulk-rate contract by the system's basic annual subscription rate for an individual household. (Thus, for example, if a CATV system charges an apartment house operator $1000 a year for a bulk rate contract and charges individual households a basic rate of $50 per year, the bulk rate contract is counted as 20 subscriptions (i.e., 1000÷50=20).) It is not contemplated, however, that such calculations should be made with respect to extra payments for additional CATV outlets within the same individual household.

§ 1.1117 Schedule of fees for commercial radio operator examinations and licensing.

(a) Except as provided in paragraph (b) of this section, applications filed for commercial radio operator examinations and licensing shall be accompanied by the fees prescribed below:

Applications for operator license:

First class license, either radiotelephone or radiotelegraph, new, renewal, duplicate or replacement	$5.00
Second class license, either radiotelephone or radiotelegraph, new, renewal, duplicate or replacement	$4.00
Third class permit, either radiotelephone or radiotelegraph, new, renewal, duplicate or replacement	$3.00
Provisional radiotelephone third-class operator certificate with broadcast endorsement—1 year term	$2.00
Restricted radiotelephone permit, new, duplicate, or replacement	$8.00
Restricted radiotelephone permit (alien)—1 year term	$2.00
Application for endorsement of license	$2.00
Application for verification card (FCC Form 758–F)	$2.00
Application for posting statement (FCC Form 759)	$2.00

(b) Whenever an application requests both an operator license and an endorsement, the required fee will be the fee prescribed for the license document involved.

§ 1.1119 Experimental Radio Services (other than Broadcast).

Fees are not required in the case of applications filed in the Experimental Radio Services (other than Broadcast).

§ 1.1120 Schedule of fees for equipment approval, acceptance or certification.

Type approval, type acceptance, certification or approval of subscription television systems shall require payment of fees as prescribed below.

Certification

Item	Filing fee	Grant fee
1. Application for certification of each receiver model:[1]		
(a) Television receivers	$10	$10
(b) FM receivers	10	10
(c) All others	10	10
2. Application for pretype certification of equipment operating under part 15	5	10
3. Request for modification of a certificated receiver with no change in model number:[2]		
(a) Television receivers	10	10
(b) FM receivers	5	10
(c) All others	5	10
4. Request for modification of a pretype certificated equipment operating under part 15 with no change in model number[2][3]	5	15

TYPE ACCEPTANCE

1. Application for type acceptance of each equipment type[2][4]	35	75
2. Application for the addition of one or more radio services to existing type acceptance for each equipment type as identified by manufacturer (or trade name) and type number	35	75
3. Approval of subscription television system	300	500

TYPE APPROVAL

1. Application or subscription for type approval:[5]		
(a) Part 73		
(1) Broadcast modulation monitors—SCA and stereo	100	100
(2) Broadcast modulation monitors—other	50	100
(3) Other broadcasting equipment	50	100
(b) Part 81		
(1) Ship transmitters including lifeboat transmitters	35	100
(2) Ship radar	100	150
(3) Ship radiotelephone shore stations	100	150
(4) Ship alarm radiotelegraph keyers	100	150
(5) Other radiotelephone devices	50	150
(c) Part 15		
(1) Wireless microphones	50	150
(2) Other low-power devices	50	75
(d) Part 18		
(1) Medical diathermy	100	150
(2) Diathermy	100	150
(3) Industrial ovens	100	150
(4) Medical ultrasonic	100	150
(5) Industrial ultrasonic	100	150
(6) Other ISM devices	50	150
2. Applications for modification of existing type approved equipment:[6]		
(a) Modifications which require retesting:		
(1) Part 73 and 81	50	50
(2) Part 15 and 18	25	25
(b) All other modifications	10	0

[1] A filing fee must be paid for each receiver which is part of a transceiver model or of equipment in which one or more receivers and transmitters are packaged on an individual unit and identified by a common equipment model number. The certification and accompanying fee must be submitted at the same time as applications for type acceptance of the associated transmitting equipment is made.

[2] A request for modification of a certificated equipment which involves a change in type (or model) number will be considered as an application for a new certification under Items 2 and 4 of this schedule.

[3] Applications for type acceptance of equipments which bear different identifications will be considered separate applications, regardless of whether such equipments may be otherwise identical.

[4] Fees for type acceptances are not required in the following cases:

(a) Where a request for type acceptance is included in an application for station license and covers only the items of equipment to be authorized in that particular station.

(b) Where a request is made by the licensee of a station for approval of modifications to a specific item or items of existing type accepted equipment authorized in that particular station.

[5] Applications for type approval of equipments which bear different identifications will be considered separate applications, regardless of whether such equipments may be otherwise identical.

[6] A request for modification of a type approved equipment which involves a change in type (or model) number will be considered as an application for a new type approval under Item 1 of this schedule.

STATEMENT OF COMMISSIONER KENNETH A. COX CONCURRING IN PART AND DISSENTING IN PART

I dissent with respect to the annual fees for broadcast stations. I would have exempted certain small stations from such fees. I concur in all the rest of the document.

F.C.C. 70-580

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of FRONTIER BROADCASTING CO., CHEYENNE, WYO. For Renewal of License of Station KFBC-TV, Cheyenne, Wyo.	Docket No. 18797 File No. BRCT-318

MEMORANDUM OPINION AND ORDER

(Adopted June 3, 1970; Released June 8, 1970)

BY THE COMMISSION: CHAIRMAN BURCH DISSENTING; COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. In a Memorandum Opinion and Order, FCC 70-166, 21 FCC 2d 570, released February 26, 1970, we designated for hearing the application of Frontier Broadcasting Company for renewal of its license for VHF television station KFBC-TV, Cheyenne, Wyoming. At the same time, we dismissed for lack of standing, a petition to deny Frontier's application, filed by Cheyenne Enterprises, Inc. The dismissal was without prejudice to Enterprises' right to file an appropriate petition for leave to intervene. On March 30, 1970, Enterprises filed a petition for reconsideration. Comments on Enterprises' petition were filed on April 16, 1970, by the Broadcast Bureau, and an opposition was filed on April 22, 1970, by Frontier.

2. Enterprises' petition requests the reinstatement of its petition to deny and that we grant it standing to participate in his proceeding. It asserts that it will suffer injury from the grant of Frontier's application since Frontier will have monopolistic control over the media of mass communications in Cheyenne, and it will be eliminated as a potential competitor. Enterprises maintains that Frontier's concentration of control gives it standing to intervene in this proceeding as a "private attorney general" in order to insure that the disposition of Frontier's renewal application will be consistent with the public interest. To this end, Enterprises contends that our criteria for standing are overly restrictive and in conflict with recent court decisions.

3. Enterprises' petition to deny is a recitation of the allegations upon this proceeding is based and a request that Frontier's renewal application be denied. In the alternative it requests conditioning a grant to Frontier upon divestiture of its CATV interests.[1] The issues in this proceeding, in considering the concentration of control of the media of mass communications, encompass the question of whether

[1] The Commission has under consideration proposed rule making which would prohibit cross ownership of television broadcast stations and CATV systems within the stations' grade B service contours. *Notice of Proposed Rule Making and Notice of Inquiry*, Docket No. 18397, 15 FCC 2d 417, 426 (1968).

or not Frontier's joint ownership would serve the public interest. Accordingly, the request to reinstate the petition to deny is moot.

4. This proceeding was founded upon allegations which were originally raised by Enterprises in its petition to deny. Taking into account the particular circumstances, we believe that Enterprises is in a position to assist the Commission in determining whether or not the grant of Frontier's renewal application would serve the public interest. Therefore, without determining whether or not Enterprises has standing as of right to participate in this proceeding, in the exercise of our discretion, we are granting Enterprises standing to participate as a party.

5. Accordingly, IT IS ORDERED, That the petition for reconsideration filed by Cheyenne Enterprises, Inc. IS GRANTED, to the extent indicated herein, and in all other aspects IS DISMISSED, as moot.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 71-311

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter AMENDMENT OF SUBPART G OF PART I OF THE COMMISSION'S RULES RELATING TO THE SCHEDULE OF FEES	Docket No. 18802

MEMORANDUM OPINION AND ORDER

(Adopted March 24, 1971; Released April 1, 1971)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER HOUSER NOT PARTICIPATING.

1. The Commission has before it a number of Petitions for Reconsideration concerning various aspects of its fee schedule adopted July 1, 1970, with an effective date of August 1, 1970. (Report and Order, 23 F.C.C. 2d 880; 35 Fed. Reg. 10988).[1] In addition, there have been submitted to the Commission a request for a Declaratory Ruling,[2] a request for further review of certain aspects of the new fee schedule,[3] and a multitude of correspondence in the months since July 1 relating to individual items in the fee schedule as adopted, as well as to the general approach taken toward the different services. The Commission has reviewed fully all of the matters raised, both explicitly and implicitly, in the many submissions by these interested persons and the following paragraphs reflect our consideration of the various categories of questions raised. However, while all of the matters raised have been fully considered, we have not attempted to address ourselves to each and every comment and our treatment of these questions by categories encompasses consideration of all of the individual variations set forth in the separate comments.

2. Questions have been raised as to the legality and propriety of the fee schedule adopted by us, based on various contentions: that the fees set forth amount to taxation; that the Commission is not required

[1] Law Offices of Arthur Stambler, Law Offices of Morgan, Lewis and Bockius Leasco Corp., Bret Broadcasting Corp., et al., Steuben Broadcasters, Inc., et al., Radio Hopewell, Inc., Clay Broadcasting Corp. (Texas) et al., Mid-America Media, Inc. et al., Stoner Broadcasting Co., National Assoc. of Broadcasters, Joint Petition-Cole, Zalstra & Perrid, American Radio Relay League, California Citizens Band Assoc., Redwood Citizens Bandcers, Inc., Special Industrial Radio Service Assoc., Inc., Electronic Marine Products Chicago Area Radio Club Council Inc., RCA Global Communications, Inc., National Broadcasting Co., Inc., Communications Satellite Corp., Joint Petition-Twenty Miscellaneous Common Carriers, United States Independent Telephone Assoc., American Trucking Assoc., Inc., et al., West Texas Microwave Co., Law Offices of Wheeler & Wheeler, Oklahoma Broadcasters Assoc., the PHD Amateur Radio Assoc., Inc., and R. G. Galbraith, et al.

[2] Jointly filed by CBS TV Network Affiliates Assoc., NBC TV Network Affiliates Assoc., and ABC TV Network Affiliates Assoc. West Texas Microwave Co., Law Offices of Wheeler & Wheeler, and Oklahoma Broadcasters Assoc.

[3] The Oklahoma comments were filed on July 10, 1970. The comments were received too late for consideration before adoption. Since the comments raised were similar to those raised in the petitions for reconsideration, the Commission has included the pleadings in the scope of this Order. Additionally, a *Supplement to Joint Petition for Reconsideration of Increase in Common Carrier Fee Schedule* was filed by United Video, Inc., and several other communications have been received from individual members of the public.

to collect, by way of fees, its entire budget; that to establish such fees, the Commission improperly relied on only one criterion—value to the recipient; and that the activity costs set forth in the Report and Order are at variance with those supplied by the Commission to the Congress. While these comments present no new information or evidence which has not been considered by the Commission in connection with the adoption of the fee schedule on July 1, 1970, it may be useful to summarize briefly the legal basis and approach underlying the adoption of our fee schedule.

Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. § 483(a)) provides that "any work . . . benefit, privilege, authority . . . franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared or issued by any Federal agency . . . shall be self-sustaining to the full extent possible and . . . each federal agency is authorized by regulation . . . to prescribe therefor such fee, charge or price . . . as [it] shall determine, . . . to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served and other pertinent facts, . . .". After the authority of the Commission to establish fees in accordance with these statutory provisions was judicially upheld (*Aeronautical Radio, Inc.*, v. *F.C.C.*, 335 F 2d 304; *cert. den.* 379 U.S. 966), the then Bureau of the Budget regularly urged the establishment of higher fee schedules and the Congress called upon the Commission, in connection with its appropriations for fiscal year 1970, to increase its fees "to fully support all of its activities." (H. Rep. 91-316, June 19, 1969, pp. 7-8; Committee of Conference, H. Rep. 91-649, Nov. 18, 1969, p. 6). Both Houses of Congress have reiterated these views in connection with their separate consideration of the Commission's appropriation for fiscal year 1971. (H. Rep. 91-1060, May 7, 1970; p. 5; Sen. Rep. 91-949, June 24, 1970, p. 5). In arriving at the new schedule of charges, the Commission has given considerable but not exclusive consideration to its allocation of costs of Commission activities, as described in its Supplemental Notice in this Docket issued on March 4, 1970. This breakdown of activity costs is obviously not on all fours with that set forth in our budget request to the Congress since, for purposes of the fee schedule, the costs of overhead and support activities were broken down on a prorated basis and allocated to the bureaus whose activities are directly the subject of fees. Paragraph 4 of our previous Report and Order fully sets forth this approach and shows the relationship between Commission costs and projected fee revenues. When viewed in this light, it seems clear that the charges established in our fee schedule are clearly legal and within our authority to establish.

Effective Date of New Fee Schedule

3. Numerous questions have been raised concerning the effective date of the new fee schedule and its overall impact. The fee schedule adopted on July 1, 1970, was made effective as of August 1, 1970. Consequently, applications received by the Commission on or after August 1, 1970, are subject to the new schedule of application filing fees, and grants made by the Commission on and after August 1, 1970,

are, except as noted below, also subject to the new schedule of grant fees. The Report and Order establishing the new fee schedule was adopted on July 1, 1970, and released and generally published on July 2, 1970, although it was not printed in the Federal Register until July 8, 1970. However, in accordance with the provisions of Section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(d), paragraph 10 of the Report and Order sets forth in some detail the reasons why the fee schedule was being made effective as of August 1, 1970, less than 30 days after its publication in the Federal Register. We believe that this action is in compliance with the provisions of applicable law and should remain undisturbed.

4. While making the new fee schedule effective as of August 1, 1970, we determined to exempt grants made on or after August 1, 1970, if the application for such grant had been filed with the Commission prior to July 1, 1970, the date of adoption of the new fee schedule. We stated in paragraph 11 of the Report and Order that application processing during the month of July would proceed on a normal basis and that action on applications would not be held up because of the imminence of the August 1 date. We also established this limited exemption in order to eliminate any claim that action on matters filed prior to the date of adoption of the new fee schedule might be delayed until on or after August 1, 1970, so as to be able to exact the new grant fees. Viewed in this light, it is clear that assertions by various petitioners of improper retroactive application of the new fee schedule are without foundation. In no instance is the newly established schedule of fees applicable to any grant which is made prior to August 1, 1970. Thus, what the parties are, in effect, contending is simply that the exemption from the new fee schedule made by the Commission with respect to grants on or after August 1 based on applications filed prior to July 1, 1970, should be enlarged and expanded so as also to exempt grants based on applications filed on or after July 1, 1970, and up to and including August 1, 1970. It is proposed by various parties to enlarge the exemption by changing "prior to July 1, 1970" to such dates as "prior to close of business July 1, 1970", "July 2, 1970", and finally "August 1, 1970". In each instance, it appears that the new exemption date proposed would, if adopted by the Commission, eliminate the grant fee in a particular matter in which the contending party is involved.

5. Apart from the individual benefits sought, however, there appears to be no basis for a change in our action in this regard. No claim of surprise as to the adoption of the new fee schedule can properly be made, since the Notice of Proposed Rule Making had been issued in February 1970, four and one half months prior to July 1, 1970, and since the Commission's representations to the Congress that a new fee schedule would be adopted by the beginning of fiscal year 1971 had been widely reported. Further, it must be recognized that while these comments have come, in the main, from the broadcast industry, the matter of separate grant fees involves not only broadcast services but also the common carrier services and our equipment approval actions. To now enlarge upon the exemption heretofore made would not only constitute a departure from the sound basis upon which the limited exemption was grounded, but *would also be inequitable with respect to*

the many applications which were filed on or after August 1, 1970, but which could have been filed prior to that date had the applicant been aware that the earlier filing would result in a saving of the grant fee. We remain of the view that the action previously taken does not constitute a retroactive application of the newly established schedule of grant fees and that the limited exemption provided heretofore rests upon a sound foundation. We find no reasonable grounds for now enlarging upon this exemption.

6. One additional point requiring reiteration concerns paragraph 11 of the Report and Order in which the Commission stated that applications received on and after August 1, 1970, would be subject to the new fee schedule. Some applicants have, by letter, complained because their applications were postmarked prior to the effective date but were not received in the Commission's offices until after the effective date of the new fee schedule. Such applications have been routinely returned with a notice pointing to the insufficiency of the fee tendered. Normal Commission rules and practices regarding time of filing of documents refer uniformly to the date the document is "filed with the Commission," i.e., received at the Commission's offices. Consequently, the action by the Commission with regard to those applications is in keeping with its normal course of business, and no departure therefrom is justified herein.

Impact of New Fees on "Small Business" Licensees

7. In commending the Commission on its proposed fee schedule, the Senate Appropriations Committee in its Report of June 24, 1970 (Sen. Rep. 91-949) urged the Commission to proceed with caution "in order to insure that the new fees will be equitable in every respect and will not make operations prohibitive or unduly burdensome for the smaller licensees, and in particular, those located in the less populated areas of our country." In addition, the National Association of Broadcasters, in its petition for reconsideration, while recognizing the difficulties in establishing hard and fast levies for exemption of small broadcasters from the annual operating fee, urged the Commission to adopt a liberal waiver policy on an ad hoc basis. The Commission is, of course, deeply concerned with this matter and we have no intention of maintaining fees at such a level as to make their cost prohibitive for persons who seek or who have licenses and are otherwise qualified to be Commission licensees. In this regard, particularly, the Commission will direct its continuing review of all individual charges and will make such revisions and changes as seem to be equitable and warranted in the circumstances.

8. With respect to the broadcast services, we would reiterate our previously stated view that the new fees will not be prohibitive or unduly burdensome to the small station owner. Under the old fee schedule, AM and FM licensees paid a filing fee of $75 for renewal applications which were filed every three years. This has now been eliminated, and, by contrast, the minimum annual operating fee for existing AM and FM licensees of $52 under the new schedule reflects an increase in fees of but $27 per year as against the old schedule. Further, the new schedule establishes an annual operating fee for AM

and FM licensees at a level which is twenty-four times the station's highest single one-minute spot rate. Thus, stated another way, the annual fee is equivalent to the price of but two one-minute spot announcements per month out of the substantial number of commercials which an AM or FM station carries each month. Similarly with TV stations, the old schedule established a fee of $150.00 at license renewal time. When compared to this figure, which is equivalent to $50 a year, the new schedule setting forth a minium annual fee of $144 cannot be said to be an unduly onerous or prohibitive increase. Also, the annual fee for TV stations is equivalent to twelve times the station's highest 30 second spot announcement—this being equal to the price of only one 30 second spot announcement per month out of the large number of commercial announcements which the average TV station broadcasts each month.

9. The Commission is keenly aware of the significant number of unprofitable broadcast stations and of the contention that the annual operating fees would cause a diminution of program services by broadcast stations, particularly in marginal and unprofitable stations. We would emphasize, however, that no evidence has been submitted in support of these assertions, and that since all broadcast licensees have established financial qualifications sufficient to carry on their broadcast operations, it is highly unlikely that the new fee schedule would constitute a significant burden in a broadcast station's total operation. Further, as we emphasized in our previous Report and Order, while a station's spot rate may not be a precise index of value of the station's license, it is a figure determined upon by the licensee in his own best judgment. And any licensee claiming that the rate card in effect on June 1 (which is to be filed with the Commission as a basis for computing annual fees) is not reasonably descriptive of its yearly average, may petition for the filing of a more appropriate rate card. The Commission will, of course, maintain a continuing review in this area, and if the facts indicate a change is necessary, appropriate revisions will be made. Meanwhile, any broadcast licensee whose financial situation is such that the annual operating fees will cause a diminution of program service to the public, or otherwise materially affect his operation, may petition the Commission for a waiver of the annual operating fee for a given period, and show good cause for the relief requested.

10. Several petitioners have pointed out and protested an apparent inconsistency in the fee schedule between the Common Carrier Services and Safety & Special Radio Services with respect to the treatment for fee purposes of mobile stations and multiple transmitters. In general, the schedule for Common Carrier Services established fees on a per station or transmitter basis, while in the Safety & Special Radio Services fees were established on a per application basis without regard to the number of units covered by the application. This inconsistency stems in large measure from differences in the application procedures in the different services. While Safety & Special Radio Services procedures permit the inclusion of a number of mobile units or separate transmitters in one application form, the Common Carrier Services procedures generally require separate applications for each unit. We are in accord with petitioners' view that this inconsistency should be eliminated and that a common approach in principle should be taken

in both types of services. We further believe that the approach now reflected in the Common Carrier fee schedule should be generally adopted. Since the size of a communications systems is often reflected in the number of units or transmitters involved, fees based upon this approach should better reflect "value to the recipient" of the Commission's authorizations in these services. In addition, this approach may operate, particularly in the Land Mobile service, to limit the number of units applied for to the number of units actually required for use in a system, thus enhancing the reliability of our data concerning the actual use of licensed facilities. We, therefore, are denying the petitions for reconsideration in this regard and will issue in the near future a Notice of Proposed Rule Making looking to the adoption of such changes in the fee schedules of these services as are necessary to accomplish a common approach to the establishment of fees.

11. In the fee schedule adopted on July 1, 1970, a fee was established for the grant of applications for assignment of license for, and the transfer of control of broadcast facilities. The grant fee so established was described as "two percent of consideration for assignment or transfer". As we stated in Paragraph 22 of the Report and Order, "The Commission is well aware of the difficulty of computing the consideration in cases where cash or other ascertainable market value is not specified." Our experience during the past eight months has reflected this difficulty and we therefore urge that the parties to such transactions, where the consideration is not specified in cash, submit to the Commission with their application their own estimate of the dollar value of the consideration involved in such assignment or transfer. This should be material assistance to the Commission [4] since, as we have already stated, "there is consideration to support the assignment or transfer in all cases, and the amount of the consideration is therefore a question of fact". In this connection, we have in Paragraph 44 herein, adopted one change with respect to consultant and noncompetition agreements which should simplify the determination of consideration in such cases.

COMMON CARRIER SERVICE

Domestic Public Land Mobile Radio Service

12. The American Trucking Association, Inc., and the American Movers Conference have petitioned for reconsideration of that portion of the Commission's Report and Order which prescribes the filing fee on a per unit basis, rather than on a per application basis as formerly, for applications for license, modification of license or renewal of license for individual mobile stations. As indicated in Paragraph 10 above, we believe this approach is proper and we propose to adopt it for the Safety and Special Radio Services also. These organizations also point out that individual motor carriers hold many DPLMRS mobile station licenses authorized in a single multiple unit application, and contend that the $50 fee per unit is excessive, burdensome and without justification. Examples of multiple unit authorizations cited include 2500 units held by Aero-Mayflower, 500 units by Atlas Van Lines and 400

[4] However, because of the aforesaid difficulties, we are also considering other means of determining grant fees in such cases.

units for United Van Lines. Other companies are listed as about to apply for several hundred mobile station licenses each. Petitioners contend that the cost of obtaining the initial multiple unit license and every five years thereafter at renewal time will place a damper on this type of use of radio to the detriment of the public served by the motor carriers involved and the common carriers who provide service to them. While recognizing that the cost to the government of issuing an authorization is not the sole or decisive consideration, the petitioners aver that the value to the recipient should be counterbalanced against public policy and interest served by making common carrier mobile communications available to the motor carrier industry without the "exorbitant and burdensome" filing fee imposed. Complaints have also been received from single licensees directed against the amount of the fee for individual mobile station authorizations.

13. While recognizing that the present schedule imposes sharply increased fees for mobile stations, we do not feel that the $50 per unit is excessive for single unit applications, in view of the cost of processing such applications and the value of the authorization to the recipient. However, we agree with the petitioners that the cost of processing an application does not increase in proportion to the number of mobile units requested. We are, therefore, modifying the fee schedule to prescribe the $50 filing fee for only the first mobile unit requested in the application, with each additional unit covered by the application being subject to a fee of $30.

Point-to-Point Microwave Radio Service

14. The West Texas and "Joint Petition" challenge the equity and fairness of the grant fee prescribed for modification of construction permits or licenses in the point-to-point microwave radio service in Section 1.1113 on the grounds that the combined fee of $200 ($50 filing and $150 grant) is excessive for the many relative minor modifications involved. The addition of audio services at an average construction cost of $400 is cited as an example where the $200 fee represents an unreasonable and burdensome assessment. Furthermore, the petitioners contend that most applications for license modifications and modifications of construction permits involve only minor engineering changes with little processing cost to the Commission, and cite as examples the correction of coordinates of a station location, change of polarization or azimuth, addition or deletion of subcarrier channels, change of emission or authorized output power, antenna changes and the like. Additionally, it is pointed out in the pleadings that only a $50 fee is prescribed in the Radio Broadcast Service for similar modifications.

15. We believe that this complaint has merit and that the fee schedule should reflect a distinction between major and minor modifications of construction permits or licenses in the point-to-point microwave radio service. We are, therefore, amending this part of the Common Carrier fee schedule so that modifications and changes other than those specifically listed in this part of the schedule shall be subject to an application filing fee of $25.00 and a grant fee of $25.00.

16. Petitions for reconsideration directed against the Satellite Communications schedule were received from RCA Global Communications, Inc., Communications Satellite Corporation, and, jointly, CBS, NBC and ABC Television Affiliates Associations, respectively. All of the petitioners request reconsideration of the $50,000 flat fee for the initial construction of satellite earth stations, essentially on the grounds that the fee is excessive for all but major earth stations. The petitioners contend that the fee schedule as applying to earth stations should recognize the diversity in type, size and cost of such stations that may be required for domestic satellite system or for special satellite common carrier communication purposes in the future. All recommend a percentage of construction cost approach, with RCA suggesting 1%, ComSat ½ of 1% and the Television Associations 2%, with a maximum of $50,000 as an appropriate measure of the fee to be assessed for each station. Communications have also been received from Senator Gravel of the State of Alaska and others requesting that some provision be made in the schedule of fees to recognize the predicted growth of small and relatively inexpensive earth stations.

17. ComSat also protests the $100,000 fee prescribed for satellite construction and launch, unless it was intended by the Commission that the fee would cover an entire satellite program, regardless of the number of satellites involved, and suggests a fee of $10,000 as appropriate for each operational satellite. Further, ComSat suggests that fees associated with satellite construction should be assessed only upon satellites which are successfully emplaced in orbit and which prove capable of providing commercially acceptable service. Additionally, this carrier recommends that the grant fee for applications filed under Section 214 of the Act for authority to install GCE and multiplex equipment at earth stations be assessed against the cost of the equipment to be installed, in lieu of the present flat fee per channel established, and suggests ½ of 1% of such cost as appropriate.

18. We believe that the revised schedule adopted herein will satisfy these objections, and will take into account the differing circumstances that may pertain to domestic satellite systems. Specifically, the grant fees for earth stations and satellite constructions generally are to be based on a percentage of construction cost as set forth in the application. For applications for initial construction permit for satellite construction, a relatively nominal flat grant fee is established, with the major grant fee based on a percentage of construction cost, to be assessed after the satellite is successfully launched and capable of commercial operation. The change recommended by ComSat with respect to Section 214 applications is being made in the nonradio section of the schedule.

19. One further point concerning applications for space and earth stations in a domestic satellite system warrants mention. In its *Report and Order* in Docket No. 16495 (22 FCC 2d 86) the Commission decided to consider the issues in that proceeding in the context of concrete applications for authorization of such facilities and invited applications for systems in the 4 and 6 GHz bands, and in a further Notice of Proposed Rule Making in that proceeding, issued Septem-

ber 26, 1970, the Commission invited the submission of alternative system applications proposing higher frequencies. The Commission has accepted for filing an application submitted by Western Union (Public Notice FCC 70-953), and has provided a cut-off date of March 1, 1971, for the filing of applications to be considered in Docket No. 16495 in conjunction with Western Union's application (FCC 70-953). While labeled "applications", such filings are in essence comments on the issues in the Inquiry and Rule Making Proceeding and our invitation for the submission of varied applications reflected the Commission's view that it could best decide the issues in this proceeding with the assistance of information submitted in application form. Under these circumstances, we believe that the imposition of the normal application filing fees would be inappropriate for such submissions. Therefore, while the established grant fee will be applicable to any authorization of facilities for domestic satellite systems, applications for such facilities filed in accordance with the Commission's invitation will not be subject to application filing fees.

20. In addition to the changes noted above, two items have been added to the schedule to identify more clearly the proper fee category for auxiliary station applications, and some minor clarifying language modifications have been made in other fee item descriptions.

Common Carrier Nonradio Applications

21. As recommended by ComSat to conform with the treatment of earth station construction in the satellite communications schedule, we are prescribing that the grant fee for Section 214 applications to establish and provide channels of communication at an earth station via satellite shall be based on a percentage of construction cost, in lieu of a flat charge per channel. In this connection, we are separating Section 214 applications to establish and provide channels of communication via satellite, where no additional construction or installation of equipment is required, and prescribing relatively nominal flat filing and grant fees for these requests.

22. Footnote 9 has been added to the schedule to specify that construction projects undertaken pursuant to grant of continuing authority as permitted in Section 63.03(c) and Section 63.04(c) of the Commission's Rules are subject to the grant fee.

Safety and Special Radio Services

23. Numerous petitions for reconsideration were directed to that part of the revised fee schedules dealing with the Safety and Special Radio Services. In addition, the Commission has received many letters and comments of a less formal nature both before and after the time for filing expired. All this information, to the extent pertinent and relevant, has been included in our consideration of these matters. A letter from the Electronic Industries Association and petitions submitted by R. G. Galbraith, et. al., the California Citizens Band Association, Inc., and the Redwood Citizens Banders, Inc., stated that the grouping together of the bulk of Safety and Special licensees did not show the distinction between the various users, i.e., commercial as

against non-commercial, and that a distinction along these lines should be reflected in the fee schedule. Additionally, it was claimed that many Citizens Band licensees would elect to operate on an unlicensed basis rather than to pay the new fees. It was also stated that the increase in fee revenues should result in new enforcement programs.

24. With respect to making a distinction, in terms of fees, between commercial and non-commercial uses of authorized facilities, it should be noted that such a distinction is already reflected in the fee schedule for the Amateur Radio Service (with lesser fees) and for governmental entities using radio facilities (which are exempt from fees). Moreover, no fees are charged for applications filed in the Special Emergency Radio Service by hospitals, disaster relief organizations, beach patrols, school buses, and non-profit ambulance operators and rescue organizations. Similar exemptions are provided for applications related to Closed Circuit Educational Television Service, Civil Air Patrol Stations, Aeronautical Radio-navigation and Search and Rescue Stations and to the Disaster Communications Service. To make further distinctions for fee purposes would, at the present time, present considerable administrative difficulties. For example, in the Citizens Service a licensee is permitted to use the same licensed facilities for business purposes, for substantive personal purposes, and for a combination of these two. Likewise, in the Business Radio Service, eligibility is open to both profit-making and non-profit making enterprises. We, therefore, will make no changes in the fee schedule at the present time to reflect any further distinctions between commercial and non-commercial uses of licensed facilities. However, the Commission is regularly engaged in a continuing review of the fee schedule and the comments of these petitioners in this regard will remain under consideration.

25. The contention that increased unlicensed operation in the Citizens Band would result from the higher fees is hardly worth mentioning. The fact that a prospective licensee would operate illegally rather than pay a fee cannot seriously be considered as a factor against continuing that fee in effect. And there is no evidence to support the contention as to any increase in illegal operation.

26. Insofar as the subject of an expanded enforcement program is concerned, the Commission regularly weighs the need for such activities, together with all other demands on the Commission's time and efforts, and we will continue to do so. It should be noted in this connection that all fee revenues must be turned over to the general funds of the U.S. Treasury and that no part of the fee revenues is retained by the Commission. Our annual budget and appropriation provide both the source of funds and limitations on their expenditure with respect to all activities of the Commission.

27. The Special Industrial Radio Service Association, Inc., (SIRSA) claims that the Commission did not address itself to the original objections to the new fees made to the Commission by SIRSA and, therefore, reiterates them. These include the contentions that the general tax revenues should be utilized for part of the costs of the Commission's activities; that the S&SRSB fee revenues will be in excess of its fair share of the Commission's budget; that the fees for renewal should be less than those established for initial applications; and that

the value of S&SRSB licenses has not been adequately determined. Since these contentions have been fully considered by the Commission previously, in Paragraphs 4–5 and 38 to 43 inclusive of the Report and Order issued July 1, 1970, no useful purpose would be served by repeating our response thereto. We have the same comment with respect to the contentions of the Electronic Marine Products Association that the new fees constitute an unnecessary tax on safety equipment.

28. Three petitioners, the American Radio Relay League, Inc. (ARRL), Chicago Area Radio Club Council, Inc. (Chicago), and the PHD Amateur Radio Association, Inc. (PHD), were concerned with the Amateur section of the fee schedule. The ARRL contends that the impact of the new fees may be so severe as to bring about a decrease in the number of amateur radio operators. ARRL also asserts that the "hundreds of comments" supplied by the Amateurs were ignored because no mention was made of them in the Report and Order adopting the new schedule. The Commission is of the opinion that the ARRL has not demonstrated that the imposition of generally modest fees will have the impact predicted by the League. Concerning the complaint that the Amateurs' comments were ignored, we can only reiterate that the comments were read and considered; notwithstanding that the text of the Report and Order failed to identify each and every comment, there is no reason to conclude that they were ignored. The Chicago and PHD petitions proposed exemptions for various categories of Amateur licensees. Chicago also proposed the waiving of fees for re-examinations for licenses in the Amateur Radio Service after failure to pass the examination on which the original fee had been paid. We believe that the fee exemptions and waiver proposed by Chicago and PHD are not adequately supported by factual showings. To carry out the requested exemptions and to provide for the waiver request would not be in the public interest, since the fees are nominal and modest permitting an Amateur to operate for five years. We are, therefore, denying the petitions of the ARRL, Chicago and PHD.

29. Our attention has also been invited to an oversight which requires correction in the fee schedule for operational fixed stations using frequencies above 952 MHz. Such facilities include, among other things, microwave stations which serve CATV systems and which are authorized for a five year term in the Business Radio Service, and the present schedule calls for a fee of $75. While we have been endeavoring to shift CATV microwave systems to the CARS service, the date by which such systems are required to vacate the Business Radio Service was recently extended to February 1, 1976. At the same time, the Commission, in Docket No. 18916, adopted rules requiring Business Radio Service licensees of such systems to file renewal applications every year rather than every five years, which is the general rule for such service. The difference in fees between BRS and CARS reflects both the broader authorization and longer license term in the former and the lesser fee for CARS systems becomes applicable when a BRS licensee shifts to that service. While we believe it inappropriate to change this difference in fees, it would be equitable to adjust the renewal fee in the BRS on a pro-rata basis to $15 for the filing of annual renewal applications.

CATV

30. A "Joint Petition for Reconsideration" has been filed on behalf of approximately 200 existing or currently proposed CATV systems, directed against the CATV portion of the new fee schedule (Section 1.1116 of the Rules). Petitioners argue that the schedule is inconsistent with the "fair and equitable" standard of 31 U.S.C. Section 483(a), in that CATV systems have derived little benefit from the current CATV regulatory scheme, which they allege is primarily for the benefit of the broadcasting industry. Petitioners assert that recent rule making proposals in Docket 18397–A indicate that the Commission now embraces the concept of CATV developing as a nationa broadband communications system, and concede that the fee schedule as adopted may be justifiable for such a "truly constructive regulatory scheme." Hence, petitioners urge that we suspend and defer implementation of Section 1.1116 of the Rules until final approval is given to the pending rule making proposals. At that time, it is argued, the Commission will be able to implement the fees necessary to administer the new program. Underlying petitioners' arguments is the premise that a fee schedule must be commensurate with benefits conferred by regulation. But, as we have said and as the statute makes clear, "value to recipient" is but one of the factors to be considered by the Commission in establishing "fair and equitable" fees. Petitioners have advanced no new considerations which would justify a change in our action establishing fees for CATV systems as of August 1, 1970.

31. One specific change in the fee structure is suggested by petitioners, namely, that the fee for petitions for special relief which invoke the mandatory stay provision of Section 74.1105(c) of the Rules should be reestablished at $300, in order to discourage broadcasters from abusing the provision with frivolous pleadings interposed for delay. We have already considered the advisability of imposing a $300 fee and have concluded that such a large amount would be likely to discourage the filing of petitions which may draw attention to situations requiring remedy. There being no new arguments presented, we see no reason to reconsider our judgment.

32. The National Association of Educational Broadcasters filed a request for clarification of the applicability of Section 1.1116 of the Rules to non-commercial educational tax-exempt organizations, some of which are allegedly considering ownership and operation of CATV systems. Consistent with the fee provisions for other regulated services, no fee is contemplated under Section 1.1116, where, pursuant to Section 74.1109 of the Rules, a non-commercial educational broadcast station files an objection to a CATV system's proposed carriage of a television signal. We are amending Section 1.1116 accordingly.

33. Footnote 12 of the Report and Order adopted on July 1, 1970, implies that payment of the CATV annual fee should accompany the filing of a CATV system's annual financial report, if such a report is required as a result of the proceedings in Docket No. 18397. The financial reporting aspect of Docket No. 18397 has not yet been concluded. In the interim and in order to simplify calculation of the appropriate fee, the Commission has issued FCC Form 326–A (Computation of CATV Annual Fee) which must be filed on or before April 1 of each

year.[5] Since Commission CATV records are kept on a community basis, a separate Form 326-A, with appropriate annual fee attached, must be filed for each separate and distinct community or municipal entity (including single, discrete, unincorporated areas) served by CATV facilities, even if there is single head end and identical ownership of facilities extending into several communities.

34. In the course of administering the CATV fee schedule, it has become apparent that certain clarifications and editorial changes are required. We have discovered that, in many instances, a single filing fee has been paid for a notification pursuant to Section 74.1105 of the Rules concerning groups of CATV systems in nearby communities which share a common head end and have identical ownership of CATV facilities. Accordingly, we are adding a note to Section 1.1116 of the Rules to clarify our intention that the same principle should apply to Section 74.1105 notification fees that applies to our determination whether a CATV system lies within a given signal intensity contour of a television station—namely, that a fee is required for each separate and distinct community or municipal entity (including single, discrete, unincorporated areas) served by a CATV system, even if there is a single head end and identical ownership of facilities extending into several communities. See e.g., *Telerama, Inc.*, 3 FCC 2d 585; *Mission Cable TC, Inc.*, 4 FCC 2d 236.

35. Finally, we note that clarification is needed concerning fees for waiver petitions when it is proposed, in a single petition, to carry distant signals into more than one community located within the predicted Grade A contour of a television broadcast station in a top-100 television market. Although we have previously indicated that, for the purpose of Section 74.1105 notification fees, a separate fee is required for each community involved, we believe that such a provision would be too onerous in the context of assessing fees for the importation of distant signals into communities having a common head end and identical ownership of CATV facilities. Therefore, we are also adding a note to Section 1.1116 of the Rules to make clear that for purposes of distant station fees only, if the communities involved in a single petition are served by CATV facilities having a common head end and identical ownership, only a single set of station fees is required for all of the communities (rather than a set of station fees for each community mentioned in the waiver petition).[6] Likewise, only a single fee will be required if a waiver petition is supplemented to add an additional distant signal, and no fee will be required if the name of a community having a common head end and identical ownership of CATV facilities with those of previously named communities in a waiver petition is added to that petition.

Broadcast Services

36. Arguments concerning the authority of the Commission to adopt the fee schedule, the impact of the effective date, and waiver of fees

[5] The Commission has extended the time for filing the CATV annual fee for the 1970 calendar year to May 1, 1971.

[6] I.e., if a waiver petition also serves as a Section 74.1105 notification, a separate $10 fee will be required for each community involved, even though only a single set of station fees will be due for all of the communities.

have been discussed above. This part of the Memorandum Opinion and Order will, therefore, deal only with other matters raised in the petitions for reconsideration and with problems which have arisen in administering the new fee schedule with regard to broadcast services.

37. *Annual License Fee.* The annual license fee is based on the rate card of the station. Paragraph 26 of the Report and Order stated that for AM and FM stations having a joint AM–FM rate, the payment of a single fee based on the highest one-minute joint rate would suffice to cover the operations of both stations and it would not be necessary to allocate part of the joint fee to AM and part to FM and pay two fees. Similar provision was made as to parent-satellite television stations with joint rates. It now appears that some AM–FM operations have both joint rate cards and separate rate cards, and that this is also true for some parent-satellite TV operations. Thus, for example, an AM–FM operation may have joint rates for "drive time" and separate rate cards for other periods of the broadcast day. In such situations, separate fees must be paid by the licensee—one for the AM station based on its rate card and one for the FM station based on its rate card. Similarly, where there are separate rate cards in parent-satellite TV operations, separate annual fees must be paid.

38. Section 1.1111 of the fee schedule provides that each broadcast station shall pay an annual license fee. Section 1.1102(c) requires that these fees be paid on or before the anniversary date of the expiration date of the station's license. It also provides that new stations become liable for the fee when they are granted program test authority and that in the first year, the fee will be pro-rated to cover the period between the date of authorization of program test authority and the next payment date. Questions have arisen as to whether this language means that a permittee operating under program test authority must pay the annual fee at the next payment date for licensees in his State even though it is a permittee and not a licensee, or whether it is not liable for the fee on the next payment date if it has not yet received a license to cover its construction permit. The intent of Section 1.1102(c) [now redesignated 1.1102(e)] is the former, *i.e.*, any operating station, whether operating under a license or a permit with program test authority, must pay the annual fee, on the date generally applicable to stations in its State.

39. Paragraph 11 of the Report and Order stated that in the first year under the new fee schedule which became effective August 1, 1970, the annual fees for broadcast stations would be pro-rated over the number of full months of operation beginning August 1, 1970. However, some licensees, on their anniversary dates occurring since the fee schedule became effective, have submitted fees for a full year of operation rather than for the number of months of operation between August 1, 1970, and the anniversary date. Such overpayments will not be refunded but will be credited to any future fees—annual operating fees or other fees—that become due for the station.

40. *Construction Permits for TV Stations—Market Ranking.* The fee schedule provides that grant fees for construction permits for new TV stations or for major changes in existing TV stations shall vary, depending on whether the station is located in the top 50 markets, the next 50 markets, or the remaining markets. Market rank

is determined by the rating of the American Research Bureau (ARB) on the basis of the net weekly circulation for the most recent year. Inasmuch as the ARB no longer regularly ranks markets in this fashion, the rule will be amended to specify use of ARB market ranking, for the most recent year, based on prime time households (average quarter-hour audience during prime time, all home stations)—a method presently used by ARB for ranking. The ARB "Television Market Analysis" which contains the market rankings is issued about May of each year. While Section 1.1102(b) [now redesignated 11.1102(d)] of the Rules provides that grant fees are payable within 45 days after the grant is made, the amount of the grant fee that is payable is determined by the market ranking in effect on the date of the grant. Similarly, the amount of application filing fee which is payable is determined by the market ranking in effect on the date the application is filed.

41. *Exemptions from Certain Assignment and Transfer Fees.* Comments in this proceeding suggested that applications for assignment or transfer occasioned by rules that might be adopted in Docket No. 18110, requiring divestiture on the part of licensees holding multiple media in the same market, should not be assessed fees. Paragraph 23 of the Report and Order issued on July 1, 1970, indicated that Section 1.1104 would guide the Commission in such cases. It should be noted that rules requiring divestiture have been proposed in a Further Notice of Proposed Rule Making in Docket No. 18110, 22 F.C.C. 2d 339 (1970). Whether or not the proposal will be adopted is a decision yet to be made in that proceeding.

42. The National Association of Broadcasters, in its petition for reconsideration, urges a broader exemption with regard to applications related to actions taken in Docket No. 18110. It is the view of NAB that if the Commission is willing to issue a tax certificate in assignment and transfer cases, as set forth in our Public Notice, FCC 70-774, July 16, 1970, it would be consistent not to require payment of the applicable fees in such cases. We would point out, however, that Section 1.1104 of our Rules relates, among other things, to applications which are filed in order to achieve compliance with new or additional requirements of the Commission's Rules and that the rules adopted to date in Docket No. 18110 do not require divestiture by any licensee of existing facilities. We are of the view therefore that there is no present warrant for adoption of the NAB proposal.

43. In Paragraph 31 of our Report and Order issued on July 1, 1970, we indicated that we had received some specialized comments requesting exemption from fees for broadcast stations operated by tax-exempt organizations on a non-commercial basis even though the station was not classified as an educational station. Because of various questions not then resolved, we stated that we were not prepared to establish such an exemption but would keep the matter under study. We adhere to that position insofar as a general exemption for non-commercial stations is concerned. However, we are persuaded to the view that the fee exemption presently provided in the Safety and Special Radio Services for local governmental entities which operate stations in such services (which by definition is on a non-commercial basis) should, by analogy, be applied to the broadcast

services. We are, therefore, adding a new subparagraph (4) to Section 1.1111(b) to provide that fees are not required from local governmental licensees in connection with their operation of a non-commercial broadcast station.

44. *Consultant and Noncompetition Agreement—Assignments and Transfers of Control.* In establishing fees based upon the consideration paid in assignment and transfer transactions, the Commission recognized that such transactions ofttimes involve consultant and noncompetition agreements and that it was necessary to take such agreements into account in determining the consideration paid for such assignment or transfer. Thus in Paragraph 22 of our Report and Order issued on July 1, 1970, we stated that with respect to amounts paid for such agreements that are part of the overall price, the Commission would follow the general principle of tax law which permits a reasonable allocation of the total price to such agreements. Our experience with this approach discloses considerable difficulties in its application in view of the varying complexities in such agreements. On reconsideration therefore, we believe that the amount to be paid for such agreements should be viewed as part of the total consideration given for the station. Although it can be argued that the consideration for a station is separate and apart from that given for consultant services or noncompetition, the agreement for consultant services or noncompetition may also be viewed as part of the overall package which is being purchased, namely, a station without competition from a specified party or station with certain "consultant" services attached to it. (We note too that many consultant and noncompetition agreements simply reflect an approach designed in the light of tax requirements as a consequence of the overall transaction and from that point of view are quite properly to be treated, even under a principle of allocation, as part of the consideration and subject to the grant fee.) On balance, we believe that the latter view is the better one, and it accords with long-standing Commission practice of treating amounts allocated to such agreements as part of the overall consideration for a station. Additionally it avoids the difficult problem of determining whether the amount allocated to such an agreement is a reasonable one, and hence has the virtue of comporting with one of our major concerns in computing fees—that the fee be readily and simply ascertainable. Therefore, our determination of the appropriate fee required to be paid in assignment and transfer matters shall include as part of the "consideration paid," the amounts allocated to such agreements whether such an agreement is part of an overall contract for the sale or transfer of a broadcast station or a separate agreement executed in connection with such sale contract.

45. Numerous questions of a minor nature have been raised during the past six months concerning the language of Sections 1.1102, 1.1103, 1.1116 and 1.1120 of our Rules relating to fees. Clarifying language has, therefore, been inserted in these Sections, and subsections have been renumbered in Section 1.1102. One such insertion warrants specific mention. In Section 1.1102 of our rules dealing with the payment of fees, we attempted to establish a system of payment which was most practicable to those responsible for the payment of fees and which, at the same time, would not operate to delay or hold up our substantive actions in processing applications and issuing grants, approvals and

authorizations. Thus, subparagraph (d)(1) provided that required grant fees are payable within 45 days after grant by the Commission or, in the case of assignments or transfers of control in the broadcast services, immediately following consummation of the transfer or assignment. Unfortunately, however, this accommodation has been abused by some recipients of Commission authorizations in the past six months who have failed or refused to pay the required fee even after specific notification by the Commission. We are, therefore, pointing up, by the insertion of additional language in this sub-paragraph, now numbered Section 1.1102(d), that all grants, approvals and authorizations issued by the Commission are made subject to payment and receipt of the applicable fee within the required period, and that failure to make payment of the applicable fee to the Commission by the required date shall result in the grant, authorization or approval becoming null and void and ineffective after that date. A Joint Petition on behalf of miscellaneous common carriers proposes that the grant fee be payable not within 45 days after the Commission has issued its initial primary authorization, the construction permit, but subsequently upon the filing of the covering license application. However, we are not persuaded that the present requirement places any unreasonable burden upon the recipient of the grant. Further, such an approach would place grant fee payments in a time frame selected by each grantee and this would impose a considerable administrative burden on the Commission.

46. In a Memorandum Opinion and Order issued August 5, 1970 (24 FCC 2d 614), denying various Petitions for Stay of the fee schedules adopted on July 1, 1970, the Commission stated it would maintain adequate records of fee collections so that it could make such refunds as might be appropriate as a result of any changes in the fee schedule which might be adopted by the Commission after determination of the various petitions of reconsideration which had been filed with respect to the new fee schedule. As a result of revisions in the fee schedules adopted herein, certain refunds are in order and appropriate action to accomplish them will be taken by the Commission on its own initiative. The completion of this task may take some time, and the filing of individual requests for refund at this time will only serve to delay the date of completion. It is, therefore, requested that parties await action by the Commission in this regard. If, however, any person claiming entitlement to a refund has not received such refund within 60 days after the issuance of this order, he should then advise the Commission of his claim.

47. As the foregoing paragraphs make clear, major portions of the fee schedule previously adopted by the Commission and made effective as of August 1, 1970, remain unchanged. In the interests of clarity and for ready reference, we are reprinting the entire fee schedule including the changes adopted herein.

48. In view of the foregoing, IT IS ORDERED, That the Petitions noted above are either GRANTED, or DENIED, or GRANTED IN PART or DENIED IN PART, as indicated in the determinations set forth above.

49. IT IS FURTHER ORDERED, pursuant to authority contained in Section 4(i) of the Communications Act of 1934 as amended

(47 U.S.C. Section 154(i)) Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. Section 483(a)), and Budget Bureau Circular A-25 and supplements thereto, that the Schedule of Fees adopted in the Report and Order of July 1, 1970 (FCC 70-694, 35 F.R. 10988) and codified as Subpart G, Part 1, Chapter I, Title 47 of the Code of Federal Regulations, is revised to read as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

SUBPART G—SCHEDULE OF FEES FILED WITH THE COMMISSION

Authority: §§ 1.1101–1.1120 issued under sec. 501, 65 Stat. 290; 31 U.S.C. 483a

GENERAL INFORMATION

§§ 1.1101 Authority.

Authority for this subpart is contained in Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) which provides that any service rendered by a Federal agency to or or for any person shall be performed on a self-sustaining basis to the fullest extent possible. Title V further provides that the head of each Federal agency is authorized by regulation to prescribe such fees as he shall determine to be fair and equitable.

§§ 1.1102 Payment of fees.

(a) *Filing fees.* Each application, including either a petition or notification submitted under the CATV Rules, filed on or after August 1, 1970, for which a fee is prescribed in this subpart, must be accompanied by a remittance in the full amount of the filing fee. In no case will an application or other filing be accepted for filing or processed prior to payment of the full amount specified. Filings for which no remittance is received, or for which an insufficient amount is received, shall be returned to the applicant without processing. In the case of multiple applications for which a single check is drawn to over all fees for the applications, there should be attached to the remittance an accounting sheet or notice stating what fees are covered by the check or money order.

(b) *Grant fees.* The applicant shall observe the instructions contained in the Notice of Grant concerning payment of grant fees. Grant fees shall be accompanied by a transmittal advice identifying the purpose of the check. The duplicate copy of the Commission's Notice of Grant, which will specify the amount of the fee, will suffice.

(c) *All remittances should be accompanied by a letter application, rate card, grant fee notice or other document to properly identify the purpose of the fee.*

(d) Where a grant fee is prescribed in the various services, the fee will be payable within 45 days after grant by the Commission. In the Broadcast services, the grant fee, based on a percentage of the consideration, in assignment and transfer cases must be *transmitted* by the new licensee immediately following consummation of the transfer or assignment. All grants, approvals and authorizations issued by the Commission are made subject to payment and receipt of the applicable fee within the required period. Failure to make payment of the applicable fee to the Commission by the required date shall result in the grant, authorization or approval becoming null and void and ineffective after that date.

(e) *Annual Broadcast fees.* The annual fee prescribed for broadcast stations must be submitted each year on or before the anniversary date of the expiration date of the station's license. The licensee shall file the station's rate card as of the preceding June 1 together with the amount of the annual fee. A new station first becomes liable for the annual operating fee at the time program test authority is granted. In the first year, the fee will cover the period from the date of program test authority until the next payment date. (Example, if a station is in operation for seven full months prior to the next payment date, the fee is 7/12 of the annual rate).

(1) If a station has filed an application for renewal of a station license that will expire after July 31, 1970, any filing fee paid with the renewal application will be credited against the initial annual operating fee. Should a licensee pay the former renewal fee which is no longer required, there will be no refund of the filing fee; it will however be credited against the next annual fee for the station. Licensees should note that they are claiming this credit at the time they submit their rate card and pay their first annual operating fee.

(f) *Annual CATV fees.* The annual fee prescribed for CATV systems must be submitted by April 1 for the preceding calendar year. A new CATV system becomes liable for the annual operating fee as of the date it begins to charge for service to 50 subscribers or more. In the first year of operation of the system, the fee will be computed based on the average of the number of subscribers being served on the last day of each quarter of operation up to the end of the calendar year. (Example, if a system is in operation on the last day of three quarters prior to the end of the calendar year, the average of those three last-day figures it to be used in computing the fee required). The fee will cover the number of full months of operation until the end of the calendar year. (Example, if a system is in operation for seven full months prior to the end of the calendar year, the fee is $\frac{7}{12}$ of the annual rate.) In the first year of this fee schedule, a CATV system's annual fee shall be computed by taking the amount otherwise due and multiplying it by five-twelfths.

(g) Applications and attached filing fees should be addressed to: Federal Communications Commission, Washington, D.C., 20554, or to the appropriate FCC Field Office and should not be marked for the attention of any individual, bureau or office. Fee payments should be in the form of a check or money order payable to the Federal Communications Commission. The Commission will not be responsible for cash sent through the mails. All fees collected will be paid into the United States Treasury as miscellaneous receipts in accordance with the provisions of Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

(h) Receipts will be furnished upon request in the case of payments made in person, but no receipts will be issued for payments sent through the mails.

(i) Except as provided in §§ 1.1108 and 1.1104, all application filing fees will be charged irrespective of the Commission's disposition of the application. Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in a major change in the application; the resubmission will then be treated as a new application requiring a new filing fee.

§ 1.1103 Return or refund of fees.

(a) The full amount of any fee submitted will be returned or refunded, as appropriate, in the following instances:

(1) Where no fee is required for the application filed.

(2) Where the application is filed by an applicant who cannot fulfill a prescribed age requirement.

(3) Upon return of an application for renewal of an operator license which is received after expiration of the grace period.

(4) Where the applicant is precluded from obtaining a license by the provisions of section 303(1) or 310(a) of the Communications Act.

(5) Where circumstances beyond the control of the applicant, arising after the application is filed, would render a grant useless.

(6) When applications (accompanied by fees) are filed where not actually required by Safety and Special Radio Services rules (e.g., change of address, pro forma change or corporate name, etc.).

(7) When construction permit holders and licensees make nonsubstantive corrections in license grants within a period of 60 days from grant.

(b) Payments in excess of an applicable fee will be refunded only if the overpayment exceeds $2.00.

§ 1.1104 General exceptions.

(a) No fee is required for an application filed for the sole purpose of amending an authorization or pending application (if a fee is otherwise required) so as to comply with new or additional requirements of the Commission's rules or the rules of another Federal government agency affecting the authorization or pending application; however, if the applicant also requests an additional modification or the renewal of his authorization, the appropriate modification or re-

newal fee must accompany the application. Fee exemptions arising out of this general exception will be announced to the public in the orders amending the rules or in other appropriate Commission notices.

(b) No fee is required for an application filed by an alien pursuant to a reciprocal radio licensing agreement.

(c) A receiver model certificated prior to August 1, 1970, and which will continue to be distributed after August 1, 1970, need not be recertificated and no filing or grant fee shall be required for continued distribution provided it will continue to be distributed under the same trade name and model number and with identical circuitry.

§ 1.1105 General Rule (STA and Waiver).

Except as otherwise provided no filing fee is required for any application or request for special temporary authority (STA) or waiver of brief duration or minor character in any service or for the grant of either an STA or a waiver of brief duration or minor character. Upon the grant of an application or request for either an STA or a waiver of an important character, the applicant will be notified to remit a fee in the following amount for the respective services:

Broadcast Services	$25.00
Common Carrier Services	25.00
Safety and Special Radio	5.00
Cable Television Services	25.00

§ 1.1111 Schedule of fees for Radio Broadcast Services.

(a) Except as provided in paragraph (b) of this section, the fees prescribed below are applicable to applications and operations in the Radio Broadcast Services:

CONSTRUCTION PERMITS

Application for construction permit for new station or for major changes in existing station:

	Filing fee	Grant fee
VHF—Top 50 markets [1]	$3,000	$45,000
UHF—Top 50 markets	2,500	22,500
VHF—Next 50 markets	2,000	18,000
UHF—Next 50 markets	1,000	9,000
VHF—Balance	1,000	9,000
UHF—Balance	500	4,500
FM—Class A	100	900
FM—Class B and C	300	1,800
AM—Day—50 kw	500	4,500
AM—Day—25 kw	400	3,600
AM—Day—10 kw	300	2,700
AM—Day—5 kw	200	1,800
AM—Day—1 kw	100	900
AM—Day—500 w	50	450
AM—Day—250 w [2]	25	225
AM—Unlimited 50 kw	1,000	9,000
AM—Unlimited 25 kw	800	7,200
AM—Unlimited 10 kw	600	5,400
AM—Unlimited 5 kw	400	3,600
AM—Unlimited 1 kw	200	1,800
AM—Unlimited 500 w	100	900
AM—Unlimited 250 w [2]	50	450
AM—Class IV	100	900
For Directional Antenna in addition to the above	50	450

[1] The market size shall be determined by the rating of the American Research Bureau, on the basis of the net weekly circulation for the most recent year.

[2] The fee for major changes in 100 watt operations is the same as for 250 watt operations.

Fees, Schedule of

OTHER APPLICATIONS

The following fees shall accompany each application:

	AM	FM	TV	Auxiliary[1]
Applications filed on FCC Form 316 (where more than one broadcast station license is involved, the application must be accompanied by the total amount of the fee prescribed for each license so involved).	$250	$250	$250	No fee
Application for construction permit to replace expired permit, FCC Form 321.[2]	500	500	500	$50
Application for modification other than a major change	50	50	50	50
Application for change of call sign for broadcast station	100	100	100	No fee
All other applications in the broadcast services	50	50	50	50

[1] With respect to applications for remote pickup broadcast stations authorized under Subpart D of Part 74 of this chapter, one fee will cover the base station (if any) and all the remote pickup mobile stations of a main station, provided the applications therefor are filed at the same time.

[2] The $500 fee applies to construction permits for new stations or major changes in existing stations. An application to replace a construction permit for a modification other than a major change must be accompanied by a fee of $50 in all services.

SUBSCRIPTION TELEVISION

Application for Subscription Television Authorizations:
Application Filing Fee..... $1,000

ASSIGNMENTS AND TRANSFERS

Application for assignment of license or transfer of control, exclusive of FCC Form 316 applications (where more than one broadcast station license is involved, the total amount of fees prescribed for each license so involved will be paid in the manner set forth below):

Application Filing Fee..... $1,000.
Assignment and Transfer fee to be paid immediately following consummation of the assignment or transfer. 2 percent of consideration for assignment or transfer.

ANNUAL LICENSE FEES

Each broadcast station shall pay an annual license fee to the Commission that is based on the station's rate card as of June 1 of each year.[1]

For AM and FM radio stations:

The annual fee will be a payment equal to 24 times the station's highest single "one-minute" spot announcement rate, but in no event shall the annual payment for each AM and each FM station be less than $32;

For television broadcast stations:

The annual fee will be a payment equal to 12 times the station's highest "30-second" spot announcement rate, but in no event shall the annual payment be less than $144.

(b) Fees are not required in the following instances:

(1) Applications filed by tax exempt organizations for the operation of stations providing noncommercial educational broadcast services, whether or not such stations operate on frequencies allocated for noncommercial educational use.

(2) Applications in the AM service requesting only authority to determine antenna power by direct measurement.

(3) All television translator applications and all television translator relay stations.

(4) Applications by local government entities in connection with the licensing or operation of a non-commercial broadcast station.

[1] In the first year of this fee schedule, a station's fee will be computed by taking the number of months from the effective date to the payment date divided by 12 times the full year annual fee. Stations beginning operation, pursuant to program test authority, after the license expiration anniversary date are liable for a pro rata amount of the annual fee equal to the number of full months in operation from the date of program test authority to the payment date for the short period.

§ 1.1113 Schedule of fees for Common Carrier Services.

Applications filed for Common Carrier Services shall be accompanied by the fees prescribed below:

	Filing Fee	Grant Fee
DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE [1]		
Application for initial construction permit or for relocation of a base station, including authority for mobile units, blanket dispatch station authority,[2] and standby transmitters without independent radiating systems.[3] [4]	$100	$150.
Application for initial construction permit or for relocation of a dispatch station,[3] auxiliary test station, control station or repeater station.[4]	50	$75.
Application for other than initial construction permit, modification of construction permit or license for base station, dispatch station, auxiliary test station, control station or repeater station at an existing station location.	25	$50.
Application for renewal of base station	25	$125.
Application for renewal of license for dispatch station, auxiliary test station, control station or repeater station.	10	$50.
Application for license, modification of license or renewal of license for individual mobile stations:		
One mobile unit per application	50	None.
Each additional mobile unit per application	30	None.
RURAL RADIO SERVICE		
Application for an initial construction permit or for relocation of central office, inter-office or relay facilities.[4]	100	$100.
Application for other than initial construction permit, modification of construction permit or license for central office, inter-office or relay facilities	25	$50.
Application for license or modification of license for individual subscriber stations.	5	$20.
Application for license for operation of rural subscriber stations at temporary-fixed locations.	10	$20.
Application for renewal of license of central office, inter-office or relay station.	125	None.
Application for renewal of license of rural subscriber station	25	None.
POINT-TO-POINT MICROWAVE RADIO SERVICE		
Applications for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to existing points of communication or for relocation of facilities.[4] [6]	50	$150.
Application for license for operation of a station at temporary-fixed locations.	50	$100.
Application for other modification of construction permit or modification of license.	25	$25.
Application for renewal of license	25	$100.
LOCAL TELEVISION TRANSMISSION SERVICE		
Application for construction permit or for modification of construction permit to add or change point(s) of communication or to increase service to an existing station location or for relocation of facilities.[4]	50	$150.
Application for license for operation of an STL station at temporary-fixed locations.	50	$100.
Application for license for operation of a mobile television pickup station.	50	$100.
Application for other modification of construction permit or modification of license.	25	$75.
Application for renewal of license	25	$50.
INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES		
International Fixed Public Station:		
Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station.[4]	150	$600.
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter(s) being replaced if both applications are filed simultaneously).	75	$100.
Application for change of location of an authorized station	150	$400.
Application for modification of license	25	$100.
Application for renewal of license	100	$200.

See footnotes at end of table.

	Filing Fee	Grant Fee
International Control Station:		
Application for an initial construction permit for a new station or an additional transmitter(s) at an authorized station.[6]	100	$400.
Application for construction permit for a replacement transmitter(s) at an authorized station (no fee will be charged for application for modification of license to delete transmitter being replaced if both applications are filed simultaneously).	80	$200.
Application for change of location of an authorized station	100	$400.
Application for modification of license	25	$100.
Application for renewal of license	80	$160.
OTHER RADIO APPLICATIONS		
Application for assignment of an authorization or transfer of control (a separate fee is required for each call sign covered by the application).	10	$80.
All other common carrier radio applications	25	None.
SATELLITE COMMUNICATIONS SERVICES[7]		
Application for initial construction permit for commercial transmit/receive earth station.[4]	200	½ of 1% of construction cost as set forth in the application, not to exceed $50,000.
Application for initial construction permit for a commercial receive only or transportable earth station.[5]	100	½ of 1% of construction cost as set forth in the application, not to exceed $25,000.
Application for initial construction permit for an earth station to be used solely for developmental or noncommercial purposes.[4]	80	$150.
Application for renewal of license for a developmental or noncommercial earth station.	80	$160.
Application for modification of construction permit or license or for construction permit for additional equipment at an existing commercial earth station.	100	½ of 1% of construction cost as set forth in the application.
Application for authority to operate a transportable earth station at a fixed site.	100	$265.
Application for renewal of license for a commercial transmit/receive earth station.	100	$6,600.
Application for renewal of license for a commercial receive only earth station.	80	$660.
Application for initial construction permit or modification of construction permit or license for an auxiliary station (beamsight) to an earth station or for a telemetry, tracking, and control station.	80	½ of 1% of construction cost as set forth in the application.
Application for renewal of license of an auxiliary station to an earth station or for a telemetry, tracking, and control station.	80	$200.
Application for initial construction permit per satellite	200	$5,000.
Application for authority to launch and operate satellites, per satellite.	200	½ of 1% of satellite construction cost as set forth in the application (due 45 days after successful launch and operation).
Application for assignment of a commercial transmit/receive earth station or satellite construction permit or license or transfer of control of a licensee or permittee, per earth station or satellite.	100	$200.
Application for assignment of a commercial receive only or transportable earth station construction permit or license or transfer of control of a licensee or permittee, per earth station.	25	$80.
Application for communications common carrier for authorization to own stock in the Communications Satellite Corporation.	25	$80.
Any other application filed under the Communications Satellite Act or the Communications Act of 1934 in the Satellite Communications Services.	25	$80.
COMMON CARRIER NONRADIO APPLICATIONS		
Section 214 applications for construction landline coaxial cable[9]	100	$5 per route mile.
Section 214 applications to extend or supplement facilities by construction of landline voice cables or installation of carrier equipment on landline wire, cable or radio routes.[9]	80	$5 per 100 equivalent 4 kHz channel miles authorized.[10]
Section 214 applications to lease facilities from other carriers (except overseas channels).[9]	25	$4 per 100 equivalent 4 kHz channel miles authorized.[10]
Section 214 application for overseas cable construction	1,000	$20 per route mile (nautical).
Section 214 applications to establish communication channels on overseas cables.[10]	80	$10 per 100 equivalent 3 kHz miles authorized.[10]
Cable landing license	100	$100.
Section 214 application to acquire overseas cable channels	80	$8 per 100 equivalent 3 kHz channel miles authorized[10]

See footnotes at end of table.

	Filing Fee	Grant Fee
Section 214 application to acquire domestic circuits to interconnect international circuits:		
Circuits outside of the United States	25	None.
Circuits within the U.S. or Territories	25	25 per 100 equivalent 4 kHz channel miles authorized.[1] [2]
Section 214 applications to install carrier equipment to establish channels of communication at an earth station.	100	½ of 1% of equipment and installation cost as set forth in the application.
Section 214 application to establish and provide channels of communication via satellite.	50	$250.
Section 214 application to acquire satellite channels	50	$20 per equivalent 4 kHz channel.
Section 214 applications to discontinue, reduce or impair service to the public:		
Telephone companies	50	$50.
Telegraph companies	10	$15.
Public Coast Stations	10	$15.
Interlocking Directorate applications	10	$40.
Section 221 applications	10	$200.
Tariff applications to change charge or regulations on less than statutory notice	25	None.
All other Common Carrier nonradio applications	25	None.

[1] In this service each transmitter at a fixed location is a separate station notwithstanding the inclusion of more than one such station on a single authorization or under a single call sign.

[2] When included as part of a base station application, a request for blanket dispatch station authority made pursuant to the provisions of § 21.519(a) of this chapter does not require an individual application. A request for such dispatch station authority filed separately from a base station construction permit application requires an application for modification of license and an appropriate fee.

[3] An application for a standby transmitter having its own independent radiating system requires the same fee as a base station application.

[4] No additional fee will be charged for applications for licenses to cover a construction permit unless there is a modification or variation of outstanding authority involved. In that event the appropriate fee for modification is applicable.

[5] This fee applies to any request for dispatch station authority not made pursuant to § 21.519(a) of this chapter.

[6] For applicants who propose to multiplex their radio systems and who make the supplementary showing required by § 21.706 of the Rules in the lead application in lieu of filing a separate application under Section 214 of the Act, an additional grant fee will be payable at the rate of $6 per 100 equivalent 4 kHz channel miles, as prescribed in the schedule for Section 214 applications to extend or supplement facilities.

[7] The filing fees specified in the schedule for satellite communications services do not apply to initial applications for domestic systems to be considered in conjunction with that of Western Union; Public Notice FCC 70-963. However, the grant fees will be applicable to any grant. All subsequent applications will be subject to the filing as well as the grant fees.

[8] In the case of connecting circuits for international satellite circuits the mileage is computed as the distance from the United States terminal to the nearest earth station.

[9] Projects undertaken pursuant to grant of continuing authority as prescribed in §§ 63.03(c) and 63.04(c) of the Commission's Rules are subject to the grant fee.

[10] Fees for other than 4 kHz channels or 3 kHz channels will be the appropriate multiples or fractions of the 4 kHz or 3 kHz channel fee.

§ 1.1115 Schedule of fees for the Safety and Special Radio Services

(a) Except as provided in paragraph (c) of this section, the fees set forth in the schedule below shall accompany all formal applications for authorizations filed in the Safety and Special Radio Services:

Applications for all authorizations except as noted below	$20
Interim ship license including subsequent initial license	25
Operational fixed stations using frequencies above 952 MHz:	
Initial license and 5 year renewal	75
Assignment of license	75
Yearly renewal	15
Common Carrier Public Coast Stations:	
Initial license and renewal	75
Assignment of license	75
Amateur Service:	
Initial license, renewal and new class of operator license	9
Modification of license without renewal	4
Modification of license with renewal	9
Special Call Sign (plus other applicable fee)	25

(b) Except as provided in paragraph (c) of this section, the fees set forth below shall accompany the following applications or requests filed in the Safety and special Radio Services:

Duplicate license	6

(c) Fees are not required in the following instances:

(1) Applications filed in the Police, Fire, Forestry-Conservation, Highway Maintenance, Local Government, and State Guard Radio Services.

(2) Applications filed by governmental entities in any of the Safety and Special Radio Services.

(3) Applications filed by the following in the Special Emergency Radio Service: Hospitals, Disaster Relief Organizations, Beach Patrols, School Buses, and non-profit Ambulance Operators and Rescue Organizations.

(4) Applications filed in the Disaster Communications Services.

(5) Applications for ship inspections pursuant to the Great Lakes Agreement, the Safety of Life at Sea Convention, and Parts II and III, Title III, of the Communications Act of 1934, as amended.

(6) Applications for Novice Class license in the Amateur Radio Service, applications for amateur stations under military auspices, and applications filed in the Radio Amateur Civil Emergency Services (RACES).

(7) Operational fixed Microwave Applications filed for Closed Circuit Educational Television Service.

(8) Applications for Civil Air Patrol Stations, Aeronautical Radionavigation Stations and for Aeronautical Search and Rescue Stations.

§ 1.1116 Schedule of fees for Cable Television Services.

(a) Applications, notifications and petitions filed in the Cable Television Services shall be accompanied by the fees prescribed below:

Applications in the Community Antenna Relay Service (CARS)

For a construction permit	$50
For a license or renewal	15
For a modification of construction permit or license	15

Petitions

For special relief (other than that specified below), pursuant to § 74.1109	25
For experimental operations pursuant to paragraph 51 of the December 1968 *Notice of Proposed Rule Making and Notice of Inquiry in Docket 18397* (see also, proposed § 74.1107 (b) and (c) in Appendix C of that *Notice*)	25
For waiver of hearing re carriage of distant signals within the Grade A contour of a television broadcast station in a top-100 market:	
Per proposed commercial (a) VHF station or (b) network-affiliated UHF station, distant signal	25
Per proposed (a) educational station or (b) independent UHF station, distant signal	10

Note: For purposes of the station fees only, if the communities involved in a single petition are served by CATV facilities having a common head end and identical ownership, only a single set of station fees is required for all of the communities.

Notifications pursuant to § 74.1105	10

Note: A fee is required for each separate and distinct community or municipal entity (including single, discrete, unincorporated areas) served by a CATV system, even if there is a single head end and identical ownership of facilities extending into several communities. See, e.g., Telerama, Inc., 3 FCC 2d 585; Mission Cable TV, Inc., 4 FCC 2d 236.

(b) An annual fee shall be paid by each CATV system on or before April 1 of each year for the preceding calendar year. The fee for each system shall be equal to the number of its subscribers times 30 cents. The number of subscribers shall be determined by averaging the number of subscribers on the last day of each calendar quarter. (See § 1.1102(c)).

Note: Where a system offers bulk-rates to multiple-outlet subscribers, such as apartment house or motel operators, each bulk-rate contract is viewed as a number of subscriptions to be calculated by dividing the total annual charge for the bulk-rate contract by the system's basic annual subscription rate for an individual household. (Thus, for example, if a CATV system charges an apartment house operator $1000 a year for a bulk-rate contract and charges individual households a basic rate of $50 per year, the bulk-rate contract is counted as 20 subscriptions (i.e. 1000÷50=20). Where a variety of "annual subscription rates" for individual households exists (e.g., $50 per year, if paid in one sum, or $60 per year, if paid on a per-month basis), the rate used in the subscriber formula should be the lowest annual rate which is offered to individual subscribers ($50 here). Likewise, if the bulk-rate contract is on a monthly basis, it should be divided by the lowest monthly rate which is offered. In the preceding example, a $50 per year charge should be viewed as a charge of $4.17 per month. It is not contemplated, however, that such calculations should be made with respect to extra payments for additional CATV outlets within the same individual household.

(c) Fees are not required in the following instances:

(1) Petition for special relief filed pursuant to Section 74.1109 by a noncommercial educational broadcast station.

§ 1.1117 Schedule of fees for commercial radio operator examinations and licensing.

(a) Except as provided in paragraph (b) of this section, applications filed for commercial radio operator examinations and licensing shall be accompanied by the fees prescribed below:

Applications for operator license

First-class license, either radiotelephone or radiotelegraph, new, renewal, duplicate or replacement	$5
Second-class license, either radiotelephone or radiotelegraph, new, renewal, duplicate or replacement	4
Third-class permit, either radiotelephone or radiotelegraph, new, renewal, duplicate or replacement	3
Provisional radiotelephone third-class operator certificate with broadcast endorsement—1 year term	2
Restricted radiotelephone permit, new, duplicate, or replacement	2
Restricted radiotelephone permit (alien)—1 year term	2
Application for endorsement of license	2
Application for verification card (FCC Form 758–F)	2
Application for posting statement (FCC Form 759)	2

(b) Whenever an application requests both an operator license and an endorsement, the required fee will be the fee prescribed for the license document involved.

§ 1.1119 Experimental Radio Services (other than Broadcast).

Fees are not required in the case of applications filed in the Experimental Radio Services (other than Broadcast).

§ 1.1120 Schedule of fees for equipment type approval, type acceptance and certification.

Type approval, type acceptance, certification or approval of subscription television systems shall require payment of fees as prescribed below.

Certification

Item	Filing fee	Grant fee
1. Application for certification of each receiver Model:		
(a) Television broadcast receiver	$10	$40
(b) FM broadcast receiver	10	20
(c) Any other receiver	5	20
2. Application for prototype certification of equipment operating under Part 18		
3. Request for modification of certificated receiver with no change in model number:[1]		
(a) Television broadcast receiver	10	20
(b) FM broadcast receiver	5	20
(c) Any other receiver	5	20

See footnotes at end of table.

Certification

Item	Filing fee	Grant fee
4. Request for modification of a prototype certificated equipment operating under Part 15 with no change in model number.[1]	5	15
5. Application for certification of a radio control transmitter for a door opener under Part 15.	5	20
TYPE ACCEPTANCE		
1. Application for type acceptance of each equipment type [2][3][4][5]	25	75
2. Application for the addition of one or more rule parts to existing type acceptance for each equipment type as identified by manufacturer (or trade name) and type number.	25	75
3. Approval of subscription television system	200	800
TYPE APPROVAL[6][7]		
1. Application or submission for type approval: [8]		
(a) Part 73:		
(1) Broadcast modulation monitors—SCA & stereo	100	400
(2) Broadcast modulation monitors—other	50	200
(3) Other broadcasting equipment	50	200
(b) Parts 81 and 83:		
(1) Ship transmitters including lifeboat transmitters	25	125
(2) Radar	25	75
(3) Ship automatic alarm systems	25	75
(4) Ship alarm automatic keyers	50	250
(5) Other maritime devices	25	75
(c) Part 15:		
(1) Wireless microphones	50	150
(2) Other low-power devices	25	125
(d) Part 18:		
(1) Medical diathermy	25	75
(2) Epilators	100	400
(3) Microwave ovens	100	400
(4) Medical ultrasonic	200	800
(5) Industrial ultrasonic	50	200
(6) Other ISM devices	50	200
2. Applications for modification of existing type approved equipment: [9]	50	200
(a) Modifications which require testing:		
(1) Parts 73 and 15	50	200
(2) Parts 15, 81, and 83	25	75
(b) All other modifications	10	40

[1] A request for modification of certificated equipment which involves a change in type (or model) number will be considered as an application for a new certification under items 3 and 4 of the schedule.

[2] The receiver part of a transceiver or a unit which includes a transmitter and receiver shall be separately certificated. The application for receiver certification shall be filed simultaneously with, but under separate cover from, the application for type acceptance.

[3] In the case of an equipment in which one or more receivers and transmitters are packaged as an individual equipment and identified by a single type number, each receiver shall be separately certificated. The application(s) for certification for each receiver shall be filed simultaneously with, but under separate cover from, the application for type acceptance.

[4] Application(s) for type acceptance of equipments which bear different identification will be considered separate applications, regardless of whether such equipment may be otherwise identical.

[5] Fees for type acceptance are not required in the following cases:

(a) When a request for type acceptance is included in an application for station license and covers only the item of equipment to be authorized in that particular station;

(b) When a request is made by the licensee of a station for approval of modifications to a specific item of existing type accepted equipment authorized in that particular station.

[6] Whenever an item subject to type approval is required to comply with more than one set of technical specifications, separate fees will be required for each set of technical specifications for which compliance is examined. For example, a combined frequency and modulation monitor will require the payment of fees applicable to each; a frequency monitor for standard broadcast and FM broadcast will require payment of fees applicable to each. Likewise, combination units of items of the same type, for example, a combination of two radars, will require the payment of two fees.

[7] Application(s) for type approval of equipment which bear different identification will be considered separate applications, regardless of whether such equipment may be otherwise identical.

[8] A request for modification of a type approved equipment which involves a change in type (or model) number will be considered as an application for a new type approval under item 1 of the schedule.

[9] Initial applications for type approval which request use of alternate magnetrons or other critical components will require payment of the fee indicated in 1 plus the fee required in 2(a).

APPENDIX C

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

September 23, 1959 — CIRCULAR No. A-25

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: User Charges

1. *Purpose.* Bureau of the Budget Bulletin No. 58-3 of November 13, 1957, set forth some general policies for developing an equitable and uniform system of charges for certain Government services and property. This Circular incorporates the policies contained in that Bulletin and gives further information with respect to: (a) the scope of user charge activities; (b) guidelines for carrying out the approved policies; and (c) agency submission of periodic status reports. It also prescribes Standard Form No. 4 on which periodic status reports are required.

Because this Circular applies also to the areas previously covered by Bureau of the Budget Circular No. A-28 of January 23, 1954, that Circular is hereby rescinded.

2. *Coverage.* Except for exclusions specifically made hereafter, the provisions of this Circular cover all Federal activities which convey special benefits to recipients above and beyond those accruing to the public at large. The specific exclusions which continue to be governed by separate policies are fringe benefits for military personnel and civilian employees; sale or disposal under approved programs of surplus property; postal rates; interest rates; and fee aspects of certain water resources projects (power, flood control, and irrigation). In addition this Circular does not apply to activities of the legislative and judicial branches, the municipal government of the District of

Columbia, the Panama Canal Company or the Canal Zone Government.

3. *General policy.* A reasonable charge, as described below, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.

a. *Special services.*

(1) Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours).

(2) No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public (e.g., licensing of new biological products).

b. *Lease or sale.* Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

4. *Agency responsibility.* The responsibility for the initiation, development, and adoption of schedules of charges and fees consistent with the policies in this Circular continues to rest with the agency. Each agency shall:

a. Identify the services or activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply accepted cost accounting principles in determining costs;

d. Establish the charges; and

e. In determining the charges for the lease and sale of Government-owned resources or property, apply sound business management principles and comparable commercial practices.

5. *Cost, fees and receipts, and their determination.*

a. *Determination of costs.* Costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be

established solely for this purpose. The cost computation shall cover the direct and indirect costs to the Government of carrying out the activity, including but not limited to:

(1) Salaries, employee leave, travel expense, rent, cost of fee collection, postage, maintenance, operation and depreciation of buildings and equipment, and personnel costs other than direct salaries (e.g., retirement and employee insurance);

(2) A proportionate share of the agency's management and supervisory costs;

(3) A proportionate share of military pay and allowances, where applicable;

(4) The costs of enforcement, research, establishing standards, and regulation, to the extent they are determined by the agency head to be properly chargeable to the activity.

b. *Establishment of fees to recover costs.* Each agency shall establish fees in accordance with the policies and procedures herein set forth. The provisions of this Circular, however, are not to be construed in such a way as to reduce or eliminate fees and charges in effect on the date of its issuance. The maximum fee for a special service will be governed by its total cost and not by the value of the service to the recipient. The cost of providing the service shall be reviewed every year and the fees adjusted as necessary. In establishing new fees and increasing existing fees the agency may make exceptions to the general policy (paragraph 3, above) under such conditions as illustrated below.

(1) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(2) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(3) The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(4) Payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

c. *Disposition of receipts.* Legislative proposals shall generally avoid disturbing the present rule that collections go into the general fund of the Treasury as miscellaneous receipts. However, exceptions may be made where:

(1) It is intended that an agency or program or a specifically identifiable part of a program be operated on a substantially self-sustaining basis from receipts for services performed or from the sale of products or use of Government-owned resources or property.

(2) The agency can show that the initiation or increase of fees or charges is not feasible without earmarking of receipts.

(3) The receipts are in payment of the cost of authorized special benefits for which the demand is irregular or unpredictable, such as inspections performed upon request outside the regular duty hours.

This Circular is not intended to change the present system of sharing with States and counties receipts from the lease of certain lands and the sale of certain resources.

6. *Changes in existing law.* In cases where collection of fees and charges for services or property in accordance with this Circular is limited or restricted by provisions of existing law, the agencies concerned will submit appropriate remedial legislative proposals to the Bureau of the Budget under the established clearance procedure, as provided in Bureau of the Budget Circular No. A-19.

7. *New activities.* In the establishment of new Federal activities which would provide special benefits, the agencies concerned are to apply the policies and criteria set forth in this Circular.

8. *Reports to the Bureau of the Budget.* Each agency shall make a report by December 31, 1959, for each bureau or comparable organizational unit, of the costs and charges for all services or property covered by this Circular, and shall also make a report of changes not later than December 31 of each succeeding year as a result of its annual review of such costs and charges. The initial report for any new agency hereafter established (including those established by reorganization) shall be submitted on December 31 following the end of the first fiscal year during which the agency was in operation. Each report shall cover the situation as of the preceding June 30, and shall be prepared in accordance with the instructions set forth in the attachments to this Circular.

By direction of the President:

MAURICE H. STANS
Director

Attachments

ATTACHMENT A
CIRCULAR No. A-25

INSTRUCTIONS FOR THE PREPARATION OF ANNUAL REPORTS ON USER CHARGES

1. *Form and coverage of reports.* Reports shall be prepared on Standard Form No. 4, as illustrated in Attachment B. An original and two copies will be required.

The initial report should represent a complete inventory of all services of the agency which provide a special benefit to recipients above and beyond those accruing to the public at large, and all activities under which federally owned resources or property are or could be sold or leased.

Subsequent reports covering the annual review of costs and charges shall cover only (a) services and activities not reported earlier; (b) services and activities for which charges have been changed; and (c) services and activities for which changes in the applicable category (as described below) have taken place.

2. *Preparation of Standard Form No. 4.*

a. A separate form will be prepared for each of the following categories, where applicable:

(1) Special services for which existing charges are producing full cost recovery; and lease or sale activities which are returning fair market value.

(2) Special services for which existing charges are producing less than full cost recovery; and lease or sale activities for which less than fair market value is being obtained.

(3) Special services and activities for which no charges are currently being made, and for which charges

are apparently required by the provisions of this Circular.

(4) Special services and activities for which no charges are to be made in accordance with the policy guidelines and exceptions provided in this Circular.

(5) Services and activities which have been discontinued or transferred to other agencies since the previous report. (This category is not applicable to the initial report.)

The category of items covered by each form will be identified in the heading by placing an "X" in the box corresponding with the number of the category as shown above. Forms need not be submitted for categories in which there is nothing to be reported.

b. Columns on the form will be completed as follows:

(1) Enter the identification number for the service or activity. Each service and activity shall be assigned an identification number which shall be retained from year to year, to facilitate identification in future annual reports. Agencies may devise their own coding systems for this purpose.

(2) List each special service provided under a heading "Special services", and each lease or sale activity under a heading "Lease or Sale."

(3) Enter the unit for measuring the service or property provided.

(4) Enter the amount of the charge being made for each unit as of the preceding June 30. In cases where there are various rates for differing situations, a summary schedule of rates may be attached in lieu of listing each rate individually.

(5) Enter the date the charge shown in column 4 became effective.

(6) Enter the amount of the charge which was made previous to the date in column 5.

(7) Enter the number of units of activity for the last completed fiscal year.

(8) Enter (in thousands of dollars) the cost of providing the service or the fair market value of resources or property sold or leased.

(9) Enter (in thousands of dollars) the amount of collections (net of refunds) during the last completed fiscal year.

(10) Enter the symbol of the receipt account, appropriation account, or fund account (excluding deposit funds) to which the collections were or will be credited.

(11) Enter any pertinent explanatory comments relating to the information shown in the preceding columns. On reports covering categories 2, 3, and 4, specifically note in this column, for each item, the reason(s) that full cost recovery or fair market value is not obtained. Also indicate whether full cost recovery for special services or fair market value for lease and sale activities can be obtained under existing law; the status of specific legislative proposals (e.g., under study, drafted, cleared, introduced, or reported); and the status of proposed administrative changes in fees and charges, including effective dates.

On reports subsequent to the initial report, indicate in this column the previous category in which the item was reported. On reports covering category (5), identify the services and activities transferred to other agencies or organizational units and the agency or organizational unit to which the transfer was made.

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1439

NEW ENGLAND POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1539

INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

No. 71-1555

TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

D–2

Petitions for Review of Order of the Federal Power Commission

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Decided August 15, 1972

Mr. William J. Madden, Jr., with whom *Mr. Thomas M. Debevoise* was on the brief, for petitioner in No. 71-1439.

Mr. Stanley M. Morley, with whom *Messrs. Francis H. Caskin, Edward A. Caine* and *Jerome J. McGrath* were on the brief, for petitioners in No. 71-1539.

Mr. Melvin Richter, with whom *Mr. Harry S. Welch* was on the brief, for petitioner in No. 71-1555.

Miss Joan E. Heimbigner, Attorney, Federal Power Commission, for respondent. *Messrs. Gordon Gooch*, General Counsel, Federal Power Commission, *Leo E. Forquer*, Solicitor, *J. Richard Tiano*, First Assistant Solicitor, and *William P. Diener*, Assistant Solicitor, Federal Power Commission, were on the brief, for respondent.

Before TAMM, ROBB and WILKEY, *Circuit Judges*.

TAMM, *Circuit Judge*: In this case several representatives of the natural gas pipeline and electric industry petition the court to review and set aside Federal Power Commission Order No. 427 revising existing fee schedules for filing applications under the Natural Gas Act and Federal Power Act and assessing annually the costs of administering these programs against jurisdictional companies in accordance with formulae set forth in the order. Petitioners attack both the Commission's authority to impose the fees in question and the methods employed by the Commission in allocating the fees and charges. Since it is our view that the Commission lacked statutory authority to act, we pretermit consideration of the latter issue and accordingly grant petitioners the relief they seek.

I. *The Order*

On March 18, 1971, the Commission issued Order No. 427, which (a) revised a schedule of filing fees originally promulgated in a 1966 rulemaking proceeding [1] for certain applications by natural gas companies pursuant to the Natural Gas Act; [2] (b) established for the first time a schedule of filing fees for various applications and rate schedule filings made by electric utilities pursuant to Parts II and III of the Federal Power Act; [3] and (c) established, also for the first time, a system whereby the costs of administering Parts II and III of the Federal Power Act and the Natural Gas Act, not met by filing fees, will be annually assessed against jurisdictional companies in accordance with formulae set forth in the order. Petitioners do not complain of the increased filing fees under the Natural Gas Act nor of the new fees under the Federal Power Act, but, rather, the nub of their complaint goes to the annual charges assessed. We therefore must examine them in greater detail.

The Commission imposed two types of annual charges upon pipeline companies. The first type, denominated an "annual general charge," imposed only upon Class A and Class B pipeline companies,[4] is computed as follows: Ini-

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[1] Order No. 317, 35 F.P.C. 30. The 1966 order stated that applications seeking specific authorizations required by the Natural Gas Act must be accompanied by a nominal $50 filing fee. Furthermore, fees were imposed for pipeline applications for certificates of public convenience and necessity based upon the higher of the estimated or actual cost of particular pipeline projects.

[2] 15 U.S.C. § 717 (1970) *et seq.*

[3] 16 U.S.C. § 824 (1970) *et seq.*

[4] Interstate natural gas pipeline companies are classified for accounting and reporting purposes in the Commission's

tially, the Commission determines the cost of administering its pipeline programs, subtracting therefrom the revenues derived from its first flat filing and pipeline certificate fees. The resultant net cost is recorded against a particular Class A or B pipeline based upon the ratio of its total jurisdictional gas deliveries to the total jurisdictional gas deliveries of all Class A and B pipelines. The second annual charge, denominated the "annual reserves added assessment," is imposed upon pipeline companies required to file an Annual Report—Total Gas Supply on FPC Form No. 15. The assessment is one-tenth of a mill for each Mcf of new reserves certificated for a particular calendar year as shown on that particular pipeline's Form No. 15.

The annual charge imposed upon jurisdictional electric utilities is computed as follows: A determination is made for each year of the administration costs of the Commission's public utility regulatory programs (other than those associated with coordination and reliability) from which is deducted the costs associated with services rendered to or for the benefit of electric systems which are not public utilities as defined in the Federal Power Act and the amounts received during the same period as filing fees. The "adjusted cost" is then assessed against each public utility in the proportion that the sum of the gross jurisdictional kilowatt hours it sells at wholesale and those it delivers under interchange power agreements bears to the sum of the gross jurisdictional sales by all public utilities. Furthermore, a determination is made of the Commission's cost of administration associated with its coordination and

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Uniform System of Accounts according to the amount of their annual gas operating revenues as follows:

Class A—$2,500,000 or more
Class B—$1,000,000 to $2,500,000
Class C—$150,000 to $1,000,000
Class D—$25,000 to $150,000

reliability programs which is then assessed against each public utility in the proportion that the gross revenues of such company bears to the sum of the gross electric revenues of all public utilities.

The authority upon which the Commission relied in its order assessing the foregoing annual charges and fees was Title V of the Independent Offices Appropriation Act of 1952.[5] In addition, the Commission now asserts before this court for the first time that it also bases its authority to act upon Section 16 of the Natural Gas Act[6] and Section 309 of the Federal Power Act.[7] We now turn to an examination of these statutes, the appropriate legislative history, the relevant administrative interpretations, and comparable statutes.

II. *Title V of the Independent Offices Appropriation Act of 1952*

A. *The Statute*

The Commission primarily bases its authority to impose the annual general charge upon Title V of the Independent Offices Appropriation Act of 1952, which provides in pertinent part:

> It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency . . . to or for any person . . . shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and

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[5] 65 Stat. 290, 31 U.S.C. § 483a (1970).

[6] 15 U.S.C. § 717o (1970).

[7] 16 U.S.C. § 825h (1970).

> subject to such policies as the President may prescribe) to prescribe therefore such fee, charge, or price, if any, as he shall determine to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts . . . .

The legislative history behind this proviso, a "rider" to the appropriations bill, is sparse, but its purpose was made quite clear by the Report of the House Committee on Appropriations which we now set forth:[8]

> The Committee is concerned that the Government is not receiving full return from many of *the services which it renders to special beneficiaries.* Many fees for such services are specifically fixed by law, and in some cases, it is specifically provided that no fees shall be charged. In other cases, however, no fees are charged even though the charging of fees is not prohibited; and in still others, fees are charged upon the basis of formulae prescribed in law, but the application of the formulae needs to be re-examined to bring the actual charges into line with present-day costs and other related considerations.
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> . . . .
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> The bill would provide authority for Government agencies to make charges for these services in cases where no charge is made at present, and to revise charges where present charges are too low, except in cases where the charge is specifically fixed by law or the law specifically provides that no charge shall be made. (Emphasis supplied).

As the foregoing legislative history makes clear, Title V was enacted to allow the agency to recoup costs from identifiable "special beneficiaries" where the services rendered inured to the benefit of special recipients not the general public. The statute has been consistently inter-

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[8] H.R. Rep. No. 384, 82nd Cong., 1st Sess. 2-3 (1952).

preted in this manner by the agencies of the executive branch of Government.[9]

B. *Agency Interpretation of Title V*

1. *Budget Circular No. A-25*

The standards and guidelines for application of Title V have been set forth by the Bureau of the Budget (now Office of Management and Budget) in Budget Circular No. A-25 of September 23, 1959, wherein the Bureau stated that a reasonable charge "should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit." These services include agency action which "provides special benefits . . . above and beyond those which accrue to the public at large . . . . For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the services regularly received

[9] Petitioners rely upon Aeronautical Radio, Inc. v. United States, 335 F.2d 304 (7th Cir. 1964), *cert. denied*, 379 U.S. 966 (1965), where the court upheld nominal filing fees upon certain types of radio license applications. However, in that case, unlike the instant one, the court was dealing with specific applications submitted to the Commission which conferred specific benefits upon the applicant.

> by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours)."

However, the Circular states no charge should be levied for services rendered "when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public."

The Commission urges that the annual charge comes within the terms of Circular No. A-25 because the charge relates to the cost incurred in discharging its "responsibilities in preventing the imposition of rates and charges which are unjust and unreasonable or preferential and prejudicial" and although such regulation "has provided continuing benefits to consumers," it has also

> redounded to the benefit of both industries by creating the economic climate for greater usage of the services of the regulated companies which in turn have further strengthened their financial stability and their ability to sell debt and equity securities required for capital additions to meet ever-increasing demands.

The Commission has, however, missed the point. The creation of an "economic climate" is not a special service nor is a particular pipeline or gas company the "special beneficiary" of such a climate any more than any other pipeline, gas company or the consumer in general. Indeed, under the Commission's order petitioners would be liable for the annual assessment despite the fact that they had no proceedings before the Commission for that year. In effect then, the contemplated charges would have no relation to specific services or benefits rendered. The Commission must then fall back upon its "economic climate" argument which is obviously an overly broad benefit particularly in light of the requirement that the charges be for a "measurable unit of service." Furthermore, the statutory language—"to or for any person"—as well as the Budget Circular require

an identifiable recipient. The Commission's inadequate response that the identifiable recipient is the whole industry assumes that each company receives a benefit directly proportional to revenue. This assumption is erroneous in that in any given year some companies may require substantial services from the Commission while others may neither require nor desire them.

In sum, we conclude that the regulation of these industries is primarily for the benefit of the public. Their charter statutes require them to so act. The courts have so held.[10] There is something fundamentally wrong in assessing charges on the basis of benefit to the company when the Commission must benefit the public. In the absence of a clear Congressional mandate to the contrary, we conclude that monies for the administration of programs benefitting the general public should come from the general fund of the treasury. We are well aware of the burgeoning administrative expense of operating the Government, however, only Congress can give authority to levy these fees. It has not done so here.

2. *Federal Power Commission Order 317*

In Order 317, the original fee schedule imposed in 1966,[11] the Commission espoused a position precisely opposite from that which it now espouses, concluding that the charges at issue were general, and therefore without statutory foundation. We wholeheartedly concur in the Commission's earlier observation contained in the Notice of Proposed Rulemaking wherein the Commission stated:

The Commission has reviewed its functions under . . .

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[10] *See* Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378, 388-89 (1959); Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 610-12 (1944).

[11] *See* note 1, *supra*.

the Natural Gas Act and is of the opinion that the assessment of user charges or other fees with respect to the exercise of our regulatory activities under . . . the . . . rate and accounting provisions of the Natural Gas Act would not be appropriate since these activities are primarily for the benefit of the general public rather than the regulated companies.[12]

III. *Section 16 of the Natural Gas Act & Section 309 of the Federal Power Act*

The Commission asserts for the first time on appeal that it relies upon Section 16 of the Natural Gas Act [13] and Section 309 of the Federal Power Act [14] as authority for

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[12] 30 Fed. Reg. 12077 (September 15, 1965).

[13] The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

15 U.S.C. § 717o (1970).

[14] The Commission shall have power to perform any and

Order 427.[15] Although we view this as *"post hoc* patchwork,"[16] we have considered and rejected the argument. Both sections are of an implementary rather than substantive character. The cases have made abundantly clear that while these provisions must be read in a broad expansive manner, they can only be implemented "consistently with the provisions and purposes of the legislation,"[17] and

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all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, and information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

16 U.S.C. § 825h (1970).

[15] The Commission's order does mention sections 16 and 309, however, not as substantive authority to prescribe fees, but merely as a point of reference to the source of the Commission's power to issue regulations implementing the basic grant of authority to charge the fees cataloged in Title V.

[16] Braniff Airways, Inc. v. Civil Aeronautics Board, 126 U.S.App.D.C. 399, 411, 379 F.2d 453, 465 (1967).

[17] Public Service Commission of New York v. Federal Power Commission, 117 U.S.App.D.C. 195, 198-99, 327 F.2d 893, 896-97 (1964).

"that they authorize an agency to use means of regulation not spelled out in detail, provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the act."[18] These sections merely augment existing powers conferred upon the agency by Congress,[19] they do not confer independent authority to act.

IV. *Comparable Statutes*

Putting aside Title V as authority for the order, it is highly significant that neither the Natural Gas Act nor Parts II or III of the Federal Power Act impose fees upon companies for regulation costs while Section 10(e) of the Federal Power Act explicitly requires licensees thereunder to pay annual charges "fixed by the Commission for the purpose of reimbursing the United States for the costs of administ[ering]" Part I of the Act.[20] The Congress could have, but did not set forth a provision similar to section 10(e) in the statutory sections here under review. Furthermore, many states have adopted statutes which authorize the local regulatory agency to recover from companies subject to their regulation the costs of administration either on a fixed-fee basis for specific services or as a percentage of some measure of size or value.[21] While it is clear that legislatures have the authority to so act, it is equally clear that Congress failed to do so here.

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[18] Niagara Mohawk Power Corp. v. Federal Power Commission, 126 U.S.App.D.C. 376, 381, 379 F.2d 153, 158 (1967) (footnote omitted).

[19] *See also* Mesa Petroleum Corp. v. Federal Power Commission, 441 F.2d 182 (5th Cir. 1971).

[20] 16 U.S.C. § 803(e) (1970). *See also* 16 U.S.C. § 803(f) (1970).

[21] Subcomm. on Intergovernmental Relations of the Senate Comm. on Operations, 90th Cong. 1st Sess., State Utility Commissions 22 (Comm. Print September 11, 1967).

V. *Conclusion*

For the foregoing reasons the order of the Commission under review is set aside with respect to the annual charges levied against petitioners.